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The Ombudsman | Ontario
L'Ombudsman | Ontario

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June 28, 1989

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Speaker:

It is an honour and a pleasure to present the Sixteenth Annual Report of the Ombudsman for the period of April 1, 1988 to March 31, 1989.

This report is submitted pursuant to section 12 of the Ombudsman Act.

Yours sincerely,

Eleanor Meslin

ELEANOR MESLIN

## OMBUDSMAN'S MESSAGE

At the end of this fiscal year we marked the retirement of Dr. Daniel G. Hill, the third Ombudsman of Ontario. As Temporary Ombudsman, I am taking this opportunity to express the appreciation of all the staff members who had the honour of working with Dr. Hill.

Dr. Hill was employed in the public sector in Ontario for 27 years intermittently, from the time of his appointment as the first Director of the Ontario Human Rights Commission to his retirement as Ombudsman. His vision and commitment, his legacy as founding father, innovator and initiator within the human rights movement, both in our province and in our country, are an inspiration to all who aspire to serve the public.

Having served as Executive Director during Dr. Hill's five-year term, I take pride in what has been accomplished by a very able staff, with the assistance and the co-operation of a conscientious public service, and the goodwill and support of the members of the Standing Committee on the Ombudsman and their colleagues in the Legislature, not only in the last fiscal year but during the tenure of this dedicated Ombudsman.

I am confident we have maintained a vital and healthy organization, committed to ensuring the people's right to fair treatment from government.

Dr. Hill's approach as Ombudsman reflected his background in the field of human rights and his commitment to the United Nations Universal Declaration of Human Rights, especially article 21 which provides for universal accessibility to the services of government.

In this spirit, many initiatives were undertaken to strengthen this Office. We have constantly refined and improved our capacity to handle complaints, which are the core of the Ombudsman's responsibilities. A vigorous public education and community outreach program was launched.

In addition, Regional facilities were established in Kenora, Sault Ste. Marie, Sudbury, Timmins, Windsor and London to augment existing facilities in Ottawa, North Bay and Thunder Bay. Special programs dealing with Native issues, ethnocultural concerns, French language services, and the disabled were also introduced.

This Office was made more reflective of the new Ontario - multilingual, multiracial, and multicultural. Staff morale was strengthened with the introduction of a salary administration program, an employee grievance procedure and both a management and an employee relations committee.

We have expanded the Ombudsman's focus beyond the investigation of individual complaints to include systemic investigations.

In many cases our recommendations have improved governmental administration by convincing provincial agencies to change or clarify needlessly complicated or unfair policies and procedures. In other cases the government has accepted our recommendations to amend legislation and regulations.

However, several unfinished issues still lie ahead for this Office, in the areas of our current and future jurisdiction and regarding amendments to the *Ombudsman Act*.

The Standing Committee on the Ombudsman has completed its hearings concerning the expansion of the Ombudsman's jurisdiction into children's aid societies, public hospitals and the Ontario New Home Warranty Program, and will be making its recommendations soon.

The Attorney General has caused the Ombudsman to initiate a Court challenge to the Ombudsman's authority to investigate actions and decisions of public servants acting pursuant to Orders-in-Council. If the Ombudsman's jurisdiction were to be limited in this way, 50 percent of the Ombudsman's current complaints could not be investigated. This matter is to be heard, in the near future, by the Divisional Court and I am hopeful it will be resolved in the Ombudsman's favour. If not, the Ombudsman's function will be severely restricted.

*The Ombudsman Act* has not been amended since 1975. A list of amendments was prepared by Dr. Hill's predecessor, submitted to the then Attorney General, but not passed. Since then, Dr. Hill added several amendments, which he believed are necessary to improve the Ombudsman's effectiveness. These include:

i. allowing the Ombudsman to comment publicly when the Ombudsman believes it is in the public interest;

ii. mandating the Ombudsman to conduct public education programs; and

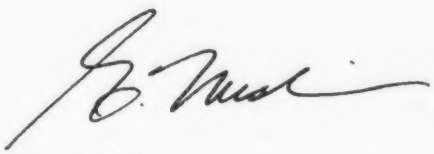
iii. permitting government agencies to pay money to complainants (ex gratia payments) where no other legal authority is available.

Although submitted to the Attorney General at the beginning of Dr. Hill's tenure, they still have not been presented to the Legislature, despite requests by both the Ombudsman and the Standing Committee.

As Temporary Ombudsman it is my privilege to present this Annual Report. The Report acts as an important public record, by providing a sense of how the various areas in the Office contribute to our overall goal — the advancement of administrative justice.

The Report reflects the varied and often complex tasks involved in achieving this goal. What cannot adequately be conveyed, is the high level of personal dedication and commitment shown by each staff member in the fulfillment of his or her duties.

Ultimately, it is their efforts which allow us to maintain our high standards in the delivery of Ombudsman's services to the public of this province.



Eleanor Meslin

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## INTRODUCTION

This Annual Report covers the fiscal year from April 1, 1988 to March 31, 1989. The Report has been divided into two parts.

Part I provides an overview of our last fiscal year and includes a selection of case summaries which illustrate the varied complaints that come before the Ombudsman.

Part II is devoted entirely to detailed summaries of recommendation denied cases and tables of all recommendations outstanding from past reports.

## FISCAL YEAR 1988-89

In commenting on the past fiscal year, 1988-89, I am pleased to report that the number of requests for assistance processed by this Office was higher than ever before in our history. The number of complaints and inquiries closed in the past fiscal year reached an all-time high of 21,485.

## EXPEDITED CASE HANDLING

On July 25, 1988, the Ombudsman issued his report on case expediting. This report resulted from recommendations made to Dr. Hill by a committee of the staff, established to review a consultant's report on the handling of cases with the view to decreasing delays and making the Ombudsman's process more efficient. Dr. Hill's report contained more than 60 recommendations, most of which focused on the investigative process. The remaining recommendations addressed matters pertaining to administration, communications, finances, personnel and the Office's regional operations.

A committee was subsequently created to ensure the implementation of Dr. Hill's recommendations. It has recently submitted a final report. A substantial number of the recommendations have been implemented, and the remaining recommendations will be implemented within the fiscal year.

## REGIONAL SERVICES

During the last fiscal year we furthered our goal of providing reasonable access to Ombudsman services in several areas of the province.

## IMPROVING ACCESSIBILITY

This year was largely characterized by the reorganization within Regional Services.

The administrative center in Toronto was restructured to create a more balanced supervisory structure. As a result the Regional program now operates under the direction of a Regional Manager and two Supervisors. This structure encourages more direct supervision and guidance on a daily basis to each region, thereby offering a means of constantly improving service delivery throughout the province.

In the Fall of 1988 we relocated the Sault Ste. Marie office from the confines of a house, into a more visible storefront operation in the downtown core. Similarily, the London office which was located on the second floor was relocated to a ground level separate storefront location, in January. The relocation of both offices reflects an attempt to become more visible and, therefore, accessible to the local communities. At present we are studying the feasibility of relocating both the North Bay and Windsor offices.

This consolidation through relocation has allowed more direct and immediate access to our services.

The comprehensive study of service delivery in Northeastern Ontario, prepared for the Ombudsman by Regional Services Staff, strongly recommended the development of a new office to service the Sudbury area. In September of 1988 the Ombudsman held meetings with community leaders in Sudbury to announce his decision to open a District office in that community. The office was officially opened in March of 1989 and has received tremendous support from the community.

This expansion of service reflects the Ombudsman's ongoing commitment to improve accessibility, particularly to the residents of Northern Ontario.

## NATIVE PROGRAM

The Native Program has been functioning since 1984. Its public education and outreach has been positive and extensive, including attendance at native provincial conferences over this period. The jurisdictional and non-jurisdictional complaint volumes have increased steadily. An evaluation is being conducted of the complaint handling and public education activities over the past five years to examine the effectiveness of service delivery to First Nations and aboriginal people of Ontario.

During this year our Office with the assistance of our Native Program Officer, Allan Pelletier, was able to assist two First Nations, Kingfisher Lake and Chippewas of Nawash, in resolving complaints against governmental agencies.

## ETHNOCULTURAL COMPLAINTS OFFICER

In an attempt to ensure that ethnocultural issues are being dealt with in a sensitive manner, we have filled the vacancy for the position of Ethnocultural Complaints Officer. Ms. Nazlin Daya will be responsible for community outreach and public education. Starting in the Metropolitan Toronto area, she has developed an ambitious, strategic plan which will involve interaction between the various ethnic groups and our staff.

## NEW APPOINTMENTS

During the past fiscal year, with the development of our regional services program, the following appointments were made:

| | |
|---|---|
| David Sora | Manager, Regional Services |
| Inez Knudson | Supervisor, Regional Services |
| Alison Irons | Supervisor, Regional Services |
| Elise Lanthier | District Officer, Timmins |
| Mary Carl | District Officer, Thunder Bay |
| Rosemarie Blenkinsop | District Officer, Sudbury. |

## PUBLIC EDUCATION

The activities of our Communications and Publications and Community Relations Units continued to expand during the last year.

The Communications and Publications Unit has put into distribution a Braille transcription of our fact sheet. In addition, an audio library has been created for all our other educational materials, previously available only in print, in keeping with federal government guidelines and our Reasonable Access Policy for materials for individuals who are unable to read or use regular print materials because of physical disability.

The Community Relations Unit continued its program of outreach and education, by organizing and participating in seminars, conferences, workshops, and media presentations. On average, a program about the Ombudsman's Office and its services took place every three days throughout the year. As well, the unit participated in over 170 media programs, reaching over 1,000,000 Ontarians with information about the Office. Week-long community events took place in Hamilton and Sudbury, with the Ombudsman hosting receptions in each centre. A major conference in Toronto introduced the Ethnocultural Project and its officer to the community. The Unit also continued to support the outreach efforts of the Regional Services division, Native programs and the special project on the disabled.

## SPECIAL PROJECT ON THE DISABLED

Our Special Project on the disabled continued its outreach, education, and complaint handling actitivies in the last fiscal year. Carole Eldridge, the Special Projects Officer, made 31 presentations to organizations and groups throughout Ontario, which resulted in direct contact with over 800 interested representatives of consumer groups, government employees, friends and family of people with disabilities, and advocacy networks. The project carried an average monthly investigative caseload of 30. An information mailing to over 100 United Way agencies resulted in inquiries, requests for more information, and several complaints. As well, Ms. Eldridge established a resource library on disability for the use of other investigative units containing several hundred reports, manuals, periodicals, legal opinions, books, and pamphlets.

## MANAGEMENT GROUP

The role of the Ombudsman's senior management committee was redefined after working with a management consultant at a two-day seminar in April, 1988.

The committee is now known as the Management Group and, having issued a statement of goals for the Office of the Ombudsman, has resolved that it is committed to carrying out the objectives of the office, including the philosophy and goals of each appointed Ombudsman.

During the year, Management Group, in conjunction with the Employee Relations Committee, has studied many aspects of the administration of the Office and made recommendations to the Ombudsman. For example, it has formulated policies relating to part-time employment, surplus and lieu time. It has also developed conflict of interest guidelines which are now an integral part of a new employee's orientation. In the summer of 1988 a summer hours program was offered to staff. Due to its success, a policy of flexible working hours was developed and is now in a 3-month trial period.

Other matters discussed by the Management Group have been: French language training, arrangements for providing multilingual services, a smoke-free working environment, a health room for staff, and an AIDS education program. Management Group has received Ombudsman approval for a program for in-house training of non-investigative staff, has begun to study the training of investigative staff and is now producing an orientation package for the new Ombudsman.

On his retirement, Dr. Hill told Management Group that the advice and guidance it had given him was invaluable, and that he hoped it would continue to function under the new Ombudsman.

## SPECIAL REPORTS

During his term as Ombudsman, Dr. Hill presented a number of Special Reports to the Speaker of the Legislative Assembly, so that these Reports might be discussed by the Standing Committee on the Ombudsman in a timely manner. During the 1988-1989 fiscal year, six such Special Reports were issued.

Three of these reports, presented to the Legislature in July of 1988, concerned the Northern Health Travel Grant Program of the Ministry of Health. The complainants were seeking travel grants as companions who, for various reasons, needed to travel with a patient for medical treatment. The Ombudsman recommended that the Ministry of Health amend the relevant regulation in order to remove all age restrictions pertaining to the provision of companion travel grants under the program, so that complainants, who were travelling with patients over the age of 18, would be entitled to grants. The Standing Committee agreed with the Ombudsman's recommendation. The Travel Grant Program is presently under review by the Ministry, a review which will take into account the Committee's recommendation.

Another Special Report to the Legislature also dealt with a complaint against the Ministry of Health. Complainants in this case are the parents of a son who suffers from a rare inherited disorder. The couple wished to have another child, but had been advised that there was one chance in four that their next child would also suffer from the terminal condition present in their first child. They had therefore decided to attempt to have a child by artificial insemination. They requested the Ministry of Health and the Ontario Hospital Insurance Plan to assist them in covering the cost of the donor sperm, but were advised that these costs were not covered under the Plan.

The Ombudsman concluded that the Ministry's refusal to assist with the cost of donor sperm was a decision taken in accordance with unreasonable legislation, and recommended that the Ministry and OHIP reconsider the inclusion of the cost of donor sperm in the Schedule of Benefits under OHIP. The Ministry declined. In the hearing before the Standing Committee, the Ministry attempted to present new information to the Committee, which it refused to accept. In the result, the Committee recommended that the Ministry arrange to provide the complainants with donor sperm at no cost as soon as an acceptable test has been developed to ensure that the donor sperm is free from the AIDS virus.

The Ombudsman also presented a case to the Legislature concerning a complaint against the Teachers' Superannuation Fund and the Ministry of Education. In this case, the complainant was not eligible for survivor benefits from her late husband's pension from the Teachers' Superannuation Fund, because she had married her husband after his retirement. The Ombudsman found the relevant provision of the Teachers' Superannuation Act to be improperly discriminatory, and recommended not only that the offending section be changed, but that the complainant be provided with an ex gratia payment in the amount of the allowance she had been denied. He also recommended that payment be made to any other surviving spouses who requested the benefit as a result of his recommendation. The Committee, after hearing from Ministry and Ombudsman staff, concluded that a review of the legislation should be undertaken by the Ministry regarding extension of eligibility for survivor benefits to spouses such as the complainant. It also recommended that the Ministry issue an ex gratia payment to the complainant and to any surviving spouses in similar circumstances whose requests resulted from the recommendation. Implementation of the recommendation has not been completed at the time of publication.

Early in 1989, the Ombudsman presented to the Legislature a Special Report on Farm Q. It complained to the Ombudsman about a decision of the Ministry of Agriculture and Food to deny compensation to Farm Q for losses it alleged it had suffered through reliance on incorrect statistics published by the Ministry. These statistics related to the quality of swine purchased by Farm Q for breeding purposes. It was Farm Q's contention that, because the Ministry's statistics made the pigs look better than they were, their breeding program was less successful than expected, and Farm Q lost money.

After a three-day hearing before the Standing Committee, the Committee recommended that the Ministry and the Ombudsman agree upon an adversarial method to determine the damages, if any, suffered by Farm Q as a result of the incorrect Ministry statistics. Discussions to determine the appropriate process are presently ongoing.

## JURISDICTIONAL CHALLENGES

The following is a summary of the jurisdictional challenges that have proceeded to the litigation stage during the current fiscal year.

### 1. BOARD OF RADIOLOGICAL TECHNICIANS

The Board of Radiological Technicians is established by the *Radiological Technicians Act* and is the supervisory body for radiological technicians in the province. In this fiscal year, the Ombudsman's Office received its first complaint against this Board. The Board has taken the position that the Ombudsman has no authority to investigate it because it is an independent body supervising a self-regulating profession. The Ombudsman, on the other hand, believes that the Board is like any other governmental organization (e.g. The Health Disciplines Board) over which the Ombudsman currently has jurisdiction. This matter will be proceeding to the Divisional Court in the near future.

### 2. THE MINISTRY OF FINANCIAL INSTITUTIONS, ET AL

This dispute is perhaps the most significant challenge to the Ombudsman's jurisdiction to date. It was raised by the Attorney General on behalf of the Ministry of Financial Institutions, and also by the Ministry of Health and the Ministry of Agriculture and Food. It concerns the Ombudsman's right to investigate the actions of civil servants carrying out their duties under the authority of an Order-In-Council. Although the Ombudsman does not investigate Orders-In-Council, the Ombudsman does investigate actions implementing Orders-In-Council or taken pursuant to Orders-In-Council. The significant impact of this challenge concerns Regulations which are promulgated by Orders-in-Council. If the Ombudsman were unable to investigate the actions of civil servants acting pursuant to Regulations, then a substantial amount of the Ombudsman's activity would be nullified. For example, the Ombudsman would be unable to investigate complaints involving correctional institutions, workers' compensation, social assistance, pensions and the Ontario Health Insurance Plan. This jurisdictional challenge could prevent the Ombudsman from investigating approximately 50 per cent of the cases that are currently now investigated. This matter will be heard by the Divisional Court in the near future.

# Case Summaries

# CASE SUMMARIES

## INTAKE AND INFORMATION

### SUMMARY NO. 1

***Very often informal inquiries by the Ombudsman help settle troublesome matters for complainants. In this case, the Ombudsman's intervention resolved a senior citizen's concern about a missing cheque.***

A senior citizen complained that his Ontario tax grant cheque, which was mailed to his bank, was not deposited in his account. He could not get any further information from the bank. He had been trying to get a duplicate cheque from the Ministry of Revenue when he was told that he should clear up the matter with his bank. During our informal inquiries with the Ministry, it was discovered that the cheque had been sent to the wrong address and had been returned to the complainant's home. From the Ministry's copies of the cashed cheque it was determined that the cheque was cashed by the complainant's son who was named after his father. The complainant was pleased that, with our Office's intervention, the matter was finally resolved.

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## SOCIAL BENEFITS

### SUMMARY NO. 2

***The Ombudsman was able to help an isolated Northern Ontario community deal with a hazardous situation by alerting the parties involved.***

A Native Community Worker lodged a complaint with our Office on behalf of concerned parents in an isolated northern Ontario community.

The parents were concerned that children living at both ends of the town had to cross railway tracks in order to get to and from school. Some of these children from a nearby Native village had to cross the railway tracks as well as a highway. The safety problem that generated this complaint was that the trains often stopped for long periods of time at these crossings. In sub-zero winter weather, children walking to and from school became impatient and were seen trying to crawl under or over the stopped trains. The complaint focused upon the refusal of one of the local school boards to provide a bussing service, and the Ministry of Education's response to this matter.

As the Ombudsman does not have the jurisdiction to investigate complaints against school boards, our investigation was limited to an examination of the actions of the Ministry of Education in responding to the parents' concerns. Although the Ombudsman concluded that the Ministry's actions were not unreasonable, he expressed his concerns about the dangers to which these school children were exposed. He also wrote separate letters to the other involved parties highlighting the hazardous situation. A number of positive responses were received. The railway, in particular, replied that steps had been taken to dramatically reduce the period of time during which the crossings were blocked.

Several months later, a community member wrote to thank the Ombudsman for his support, and advised that school bus service had been instituted by the remaining school board. The letter indicated that in bringing this hazardous situation to the attention of the various parties involved, the Ombudsman was instrumental in helping the community obtain a positive resolution.

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### SUMMARY NO. 3

***The Ombudsman will support a complaint when the Ministry fails to act within a reasonable time on information available to it.***

In 1977 the complainant applied for Family Benefits as a disabled person. He also applied for a Canada Disability Pension (C.D.P.) at the suggestion and assistance of his income maintenance worker. His C.D.P. payments began in August 1977, but this income was not reported until 1982. By then an overpayment charge of approximately $16,000.00 had accumulated. Our investigation revealed that the complainant was not aware C.D.P. was considered declarable income until 1982 when his case was transferred to another income maintenance worker who took the time to explain it to him. Until then, he believed the Ministry was aware of this income as it had made the initial referral for a C.D.P.

It seemed to the Ombudsman that the Ministry failed to act on information available to it within a reasonable time. The Ombudsman made a preliminary recommendation that the Ministry waive the overpayment in accordance with its policy not to recover overpayments that result from an administrative error.

In response, the Ministry proposed that it would not recover any further monies on the condition that the complainant not seek to recover the money he had repaid to date.

The complainant and the Ombudsman considered this to be a reasonable solution.

## SUMMARY NO. 4

***Sometimes, in the course of making informal inquiries, new information is uncovered which results in the Ministry reconsidering its original decision. In this case, the Ombudsman assisted a student who was denied financial assistance under the Ontario Student Assistance Program (OSAP) to complete his studies.***

In 1988 the complainant applied for OSAP to attend Community College. However, the financial aid office advised the complainant that he was placed on the "restricted list" due to the fact that he defaulted on a previous OSAP loan in 1987. The complainant had explained that he had made regular payments and had to the best of his knowledge repaid his previous loan. The complainant submitted an appeal but the decision was unchanged. Further, he was advised that he would remain on the restricted list for a period of one year. Without a loan, the complainant indicated that he would be unable to continue in his program at the college.

The complainant indicated that he had last made payments in 1987 through a private collection agency. When advised he had $95.00 outstanding to repay the account, the complainant asked for an explanation from the collection agency for this figure. The agency agreed to provide him with an explanation. Nonetheless, it appears the collection agency closed the account and contacted Central Collection Services (of the Ministry of Government Services) that the debt was uncollectable and that they advised CCS to write off the account. However, the complainant was not notified by either the private collections agency or by Central Collection Services (CCS) that the account was written off and that the student would be placed on the restricted list, which in effect, would prevent him from obtaining future student loans.

Central Collection Services confirmed that the complainant had made regular payments up to March 1987 and that he had paid a total of $1,045.00 to the private collection agency. CCS also verified that the account was closed without notifying the complainant or giving him an opportunity to pay the balance before placing him on the restricted list. Furthermore, CCS indicated that the private collection agency had an obligation to confirm with the complainant the exact amount owing before closing the account. This apparently was not done. Finally, CCS acknowledged that before April 1988 the Ministry did not have procedures in place to adequately monitor the practices of private collection agencies who are responsible for collecting government related debt.

In light of this information, the Student Awards Branch agreed to reconsider its original decision. Following its review, the Ministry determined that the complainant had acted in good faith and removed him from the restricted list. This resolved the complainant's problem and resulted in him being awarded a loan of $1,800.00 and a grant of $3,140.00. As a result, the complainant was able to complete his studies.

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## JUSTICE AND LICENSING

## SUMMARY NO. 5

***The system for regulating financial institutions was overhauled and improved as a result of this case, but government compensation for investors' losses was not deemed to be appropriate.***

In March, 1989 we finalized the investigation of 25 complaints about the provincial government's regulation of two fraudulently operated financial institutions. One of the companies operated as a mortgage broker and the other offered real estate syndications; both attracted investment from the public. The two companies were closed down in 1978 by cease trade orders issued by the Ontario Securities Commission.

The Ombudsman's investigation, although completed in 1984, remained open while lengthy negotiations were conducted with the Ministry concerned. Many weaknesses in the regulatory system were identified. The Ministry embarked on a comprehensive review of its operations and introduced a significantly changed system to correct the problems. The regulatory scene changed fundamentally as a result.

The investors claimed that they should have been compensated for their losses. The Ombudsman did not support this claim. He expressed every sympathy for the people who had lost their money, but concluded that, although the inadequacies of the regulatory system may have exacerbated the investors' tenuous position, it was fraudulent activity that directly caused their losses.

## SUMMARY NO. 6

***Governmental organizations often change their decisions when additional relevant information is provided. In the following cases, the Ombudsman helped one complainant obtain her birth record, and assisted another in attaining Indian status under federal legislation.***

The complainant contacted our Office regarding a long-standing dispute with the Office of the Registrar General. The complainant, never having had a birth certificate, approached the Registrar's Office in 1983 to obtain a delayed birth registration for herself. It was important to the complainant that her surname on her birth record be that of her natural father and that her mother's husband not be listed as her father. Having submitted various documents to the Registrar over the years regarding her parentage, the complainant was of the view that the Registrar was acting unreasonably in failing to accept the evidence presented and to register her in the manner she wished.

The Registrar's position, however, was that the evidence regarding the complainant's lineage was conflicting and did not conclusively determine that the complainant's father was someone other than her mother's husband. In addition, it was not clear from the evidence whether the complainant had been born prior to or during her mother's marriage to her legal husband. The Registrar proposed registering the complainant under either her mother's maiden name or married name, a solution which the complainant found unacceptable.

After a careful review of the evidence, it was discovered that the Registrar was not in possession of certain documentation dealing with the long-term relationship between the complainant's mother and the man the complainant claimed was her father. As a result of discussions and the presentation of this additional evidence, the Registrar agreed to issue a delayed birth registration to the complainant which would declare her surname as that of her natural father, but which would not identify or provide any particulars of her natural father on the record. As the complainant found this to be a satisfactory resolution, our file was closed.

In a related matter, the complainant's nephew had applied for Indian status in accordance with federal legislation and in support of his application, had approached the Office of the Registrar General in order to obtain a delayed birth registration for his deceased mother, which he believed would help substantiate his entitlement. As in the preceding case, the Registrar General was of the view that there was inconclusive evidence regarding the parentage of the complainant's mother and took the position that her name would have to be recorded as that of her mother's legal husband. Again, the complainant was not satisfied with the Registrar's decision.

The complainant in this case believed that his mother's birth records were integral to the success of his Indian status application, and that as a result of the Registrar's stand, his efforts to gain status were being stymied. He therefore sought assistance from the Ombudsman in resolving this problem.

Prior to our conducting a review of the lineage evidence in this case, we contacted the Department of Indian Affairs and requested a review of the complainant's application to confirm whether production of his mother's birth records were in fact necessary. Shortly thereafter, the Department of Indian Affairs awarded the complainant Indian status, after having concluded that given the other documentation on file, the complainant would not have to submit his mother's delayed birth registration in order to substantiate his claim for entitlement under the federal legislation.

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## SUMMARY NO. 7

***Sometimes the Ombudsman must advise a Minister and the Premier of his decisions with respect to complaints he has supported before the governmental organization takes action to implement his recommendation.***

We received two different complaints concerning decisions of the Teachers' Superannuation Commission (TSC) to deny personal representatives the right to apply for unpaid pension benefits. In the first case, the contributor had been a teacher for only a short time during his working years and once he retired, he did not apply for the pension to which he had contributed. Upon his death his spouse, who was executrix of his estate, attempted to collect his benefit, but the TSC denied her request stating that the contributor had failed to apply for a pension before his death and his spouse could not do so now.

Similarly, another complainant advised us that the TSC would not allow him, as executor of his mother's estate, to apply for the one month's survivor's benefits to which she was entitled. His mother died within one month of the TSC pensioner, but because she did not return a signed application for benefits prior to her death, the TSC would not accept our complainant's application on behalf of his mother's estate.

The *Teachers' Superannuation Act, 1983* states that an allowance shall be paid only after the Commission receives an application. The Commission interpreted that such application must be completed by the contributor, a committee or a person with power of attorney. The Ombudsman advised the Commission that, in his view, the legislation and the format prescribed by regulation made no such distinction between the type of applications which would be accepted from persons other than the contributor and those which would not.

Additionally, the Commission argued that an allowance ends at death and actuarial assessments of the Fund do not include the additional cost of benefits payable for which application is not made. In the Ombudsman's view, these cases did not concern future payments but payments to the deceased's estate of a debt due but as yet unpaid. The Ombudsman advised the Commission that he considered the Fund to have been unjustly enriched by retaining the contributors' entitlement, since actuarial assessments would be based on payments made at age 65 until death.

It was the Ombudsman's final conclusion and recommendation that the Commission's decisions in these cases were unjust and payment ought to be made. After the Ombudsman had advised the Minister of Education and the Premier of his position, the Commission notified him that it would accept his recommendation that these monies be paid, with interest, to the complainants.

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## SUMMARY NO. 8

***The Criminal Injuries Compensation Board was willing to rehear this inmate's application for compensation for injuries as his incarceration at the time of the assault presented unique circumstances.***

The complainant, a provincial jail inmate, contacted our Office to request that we investigate his dissatisfaction with a 1985 decision of the CICB.

The complainant explained that he had suffered serious permanent injuries as a result of an unprovoked attack by another inmate during his incarceration in a federal penitentiary in 1982. As this constituted a criminal assault and the penitentiary was located in Ontario, the complainant made application for compensation to the CICB. The Board in its 1985 decision expressed the opinion that the inmate had, "refused . . . cooperation with . . . a law enforcement agency", as set out in the *Compensation for Victims of Crime Act*, and as such, exercised its discretion under the legislation to refuse to make an order for compensation.

The complainant explained to our Office that the assault was reported to the correctional authorities, who took disciplinary action against the offender under the correctional system. The complainant stated that he had not failed to cooperate but had decided not to lay criminal charges against the offender, because he feared reprisals from other inmates. This evidence had been presented to the CICB; however, it formed the view that the inmate's decision constituted a refusal to cooperate with a law enforcement agency.

After making some preliminary inquiries, the CICB was notified in writing of this Office's intent to investigate the Board's decision and its use of discretion in this case. The Chairman of the CICB, on receipt of our letter and having undertaken a review of the circumstances of this case, suggested that a rehearing was appropriate.

The complainant found this suggestion of a rehearing to be a satisfactory resolution to his complaint, since it would afford him a further opportunity to claim compensation for his injuries arising out of the assault.

The complainant has since made application to the CICB and a date for a rehearing is being scheduled.

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## SUMMARY NO. 9

***Policy changes benefitting many are often the result of the investigation of an individual complaint. In this case, the Ombudsman's investigation resulted in the Criminal Injuries Compensation Board's development of a policy to provide written reasons to all applicants when they have been denied extensions of time for filing late applications for compensation.***

On March 3, 1987, our complainant, an elderly woman, made an application for an extension of time to enable her to file an application for compensation to the Criminal Injuries Compensation Board. In her application, she indicated that the crime for which she was seeking compensation occurred on August 15, 1980 (seven years earlier). The *Compensation for Victims of Crime Act* requires that all applications be made within one year of the crime. In its discretion, the Board refused her application. No written reasons were given for the refusal and no explanation was given.

The complainant could not understand why her application had been denied. Our investigation discovered that the Board had written its reasons in the file but had failed to convey them to the complainant.

The Board agreed to allow the investigator to relay the written reasons to the complainant. Also, in response to the Ombudsman's preliminary recommendation to the Board, it assured him that, in the future, it would provide written reasons to all applicants in cases in which extensions of time had been denied.

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## SUMMARY NO. 10

***New information led to the Teachers' Superannuation Commission approving the purchase of pension credit for employment in the U.K.***

The complainant, a teacher at a community college in Northeastern Ontario, contacted our Office to register a complaint against a decision of the Teachers' Superannuation Commission.

He advised that he is 60 years of age and hopes to take advantage of the early retirement (without penalty) incentive, currently offered under the *Teachers' Superannuation Act*. In order to make this financially feasible he applied to the commission to purchase eight years of pension credit for work in the U.K. from 1955. The application was denied because he was due to receive a tiny pension (about $28.00 a year) from his U.K. employer. Our investigation established that the U.K. pension was being held for the complainant to comply with requirements imposed on the employer when it opted out of the State pension scheme years earlier.

We wrote to the U.K. employer asking for clarification. We were told that the complainant would not receive any pension from the employer's pension plan and that the $28.00 State pension did not relate to the period 1955-61. This information was provided to the Commission, which then allowed the complainant to buy back six years, two months and ten days of pension credit. He plans to pay for the buy-back with the money he will receive from his early retirement entitlement.

The result is a substantial increase to the complainant's retirement income from the Ontario Teachers' Superannuation Fund.

## SUMMARY NO. 11

***Sometimes an investigation will result in a Ministry's full review of its file and a new decision.***

The complainant wrote to the Ombudsman, complaining that the legal fees charged by the Public Trustee's Office relating to her late husband's estate were unreasonable.

Upon investigation, the Public Trustee's Office reviewed its file and agreed that there were no supporting documents substantiating a portion of the legal fees charged against the husband's estate.

As a result of discussions, the Public Trustee's Office agreed to reverse the charge and send the complainant a cheque for the overpayment in the amount of $200.00.

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# LABOUR AND PSYCHIATRIC INSTITUTIONS

## SUMMARY NO. 12

***New evidence will often prompt a government agency to reconsider its original decision. In this case the Ombudsman solicited an independent medical opinion to help a worker persuade the Workers' Compensation Appeals Tribunal to hold a hearing to consider whether reconsideration of his claim was warranted.***

On January 15, 1973 the worker, then 35 years old and employed as a machinist, slipped on oil at work and injured his low back. The initial diagnosis was an acute lumbosacral strain. In April 1973, he underwent back surgery and the Workers' Compensation Board accepted his claim for benefits. He received temporary total and temporary partial disability benefits for various periods to October 1973. In December 1975, he was granted a 15% monthly permanent partial disability award for his residual low back disability.

The worker notified the Board that, subsequent to October 1973, he continued to experience occasional low back pain for which he sought medical attention. In May 1981, the worker experienced a recurrence of low back pain while he was travelling abroad. He was adamant that he did not have a new accident. He speculated that the additional walking that he had done while he was away might have contributed to his back pain. The worker related that by the end of May

1981, the pain had spread to his left hip and left leg and he was prescribed painkillers. When he returned to Canada in June 1981, he was admitted to hospital and further back surgery was performed in July 1981.

The worker's attending orthopaedic surgeon expressed the opinion that the worker's back problems subsequent to May 1981 were related to his original injury. The worker's family physician referred him to another orthopaedic surgeon, for a second opinion. That specialist indicated that from his review of cases of back surgeries like the worker's, there was a 4% to 8% chance of recurrence of disc herniation on the opposite side. After reviewing the worker's x-ray report, the attending orthopaedic surgeon was of the view that the worker's second surgery in July 1981 was related to the first surgery in 1973.

The worker's file was referred to the Board's radiological consultant, who noted that there were changes which he felt were due to scarring secondary to the surgeries. A Board surgical consultant reviewed the worker's file and indicated that he could see no relationship between the worker's further layoff from work and his compensable accident.

The Appeal Board concluded that the worker was not entitled to further disability benefits as it had not been established that his low back disability in 1981 was causally related to his 1973 accident. The worker requested that the Appeals Tribunal review the Appeal Board decision on the basis that insufficient weight was given to the medical evidence of the specialists who supported his position. However, in a subsequent decision, the Tribunal concluded that there was no good reason to doubt the correctness of the Appeal Board decision.

During the course of our investigation, the Ombudsman requested a complete review and medical opinion from an independent orthopaedic surgeon. The specialist's response, which supported the worker's claim that a causal relationship had been established, was forwarded to the Tribunal for it to consider whether this report would constitute substantial new evidence and grounds for a leave to appeal application.

The Appeals Tribunal has notified our Office that a hearing will be held to consider whether the Tribunal should embark on its reconsideration process. Consequently, as the case is once again under active consideration by the Tribunal, the Ombudsman has, for the time being, closed the worker's file.

## SUMMARY NO. 13

***On occasion, the Ombudsman will receive a complaint from a person who is not personally affected by the subject matter of that complaint.*** **The Ombudsman Act** ***prohibits the Ombudsman from investigating such a matter. However, if the Ombudsman determines that the subject matter is of a serious nature he may decide to investigate on his own motion.***

A complaint concerning the care and treatment of psychogeriatric and forensic patients at a provincial psychiatric hospital was received and the Ombudsman determined that, while the person who lodged the complaint was not personally affected, he would investigate on his own motion due to the serious nature of the concerns.

The hospital was visited on three separate occasions by two investigators and interviews were conducted with two social workers employed at the hospital, as well as with the Administrator and the Psychiatric Patient Advocate. The procedures of the Canadian Council on Hospital Accreditation were reviewed as well as the rating (the highest available) that was granted the hospital by the Council.

In addition, a hospital of comparable size and make-up was toured for comparison purposes and interviews were conducted with two social workers at that hospital.

The environment provided on the psychogeriatric wards was found to be pleasant and clean with adequate living and recreational space. Careful consideration was given to the social work service provided. Considering the funding available to the hospital and in view of the ongoing implementation of the recommendations made by the Council with regard to social work services, the Ombudsman could not support the contentions made pertaining to this service at this facility.

The areas of concern were found to be unsubstantiated and the hospital was found to be providing high-quality care for its patients, particularly on psychogeriatric and forensic wards.

Improvement in facilities and services, as suggested by the Council, are ongoing and the Ombudsman is continuing to monitor the progress achieved.

## SUMMARY NO. 14

***Bureaucratic errors, such as misplacing a document, are a common cause of complaint to the Ombudsman. In this example Ministry officials misplaced an individual's job application. The Ombudsman's investigation resulted in an apology from the Deputy Minister and an offer for special consideration.***

The complainant applied for an executive position with the government through the Human Resources Secretariat. Unfortunately, his application was misplaced; it surfaced after the closing date but before interviews were conducted. The complainant was informed that his application had been received after the closing date, and after the selection process had reached such a stage that his candidacy could not be considered.

When this Office investigated, the Ministry people concerned expressed their regret that errors had excluded our complainant from proceeding in the competition. They said that, in hindsight, he should have received an apology.

Following our preliminary recommendation that the government accept responsibility for the mistake, the Deputy Minister not only apologized to our complainant for the unfortunate and regrettable manner in which his application had been handled, but also extended an invitation to him to discuss his career interests in the Ontario Public Service with the Executive Management Branch. Accordingly, the case was closed as resolved.

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## SUMMARY NO. 15

***Often, the Ombudsman's investigation vindicates the actions of government officials. In this example the Ombudsman determined that gender did not play a part in the selection of the successful job applicant.***

The complainant, a 55-year old man, was an unsuccessful candidate for a law clerk position with the Ministry of Labour. He alleged that the successful candidate, a woman, had had an unfair advantage due to her appearance and to "those behavioural properties which pertain to a female".

Our investigation revealed that all of the individuals interviewed had met the basic position criteria and the interview had been used as a means of ranking the candidates according to their ability. The selection panel was comprised of a man and a woman. It was confirmed that all of the applicants had been asked the same prearranged set of questions.

The Ombudsman found that the successful candidate, who possessed excellent qualifications, did very well at her interview. There was no indication that her gender had had any effect on the panel's decision.

The complainant did not have a successful interview and had been ranked as ninth out of ten applicants. This appeared to be an accurate and fair evaluation. In view of these facts, the Ombudsman found that the complainant's allegations could not be substantiated.

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## SUMMARY NO. 16

***When an inequity is apparent the Ombudsman will pursue the matter until justice is done. In this case a monetary settlement was granted after the Ombudsman's investigation revealed unfair practices by a member of a Selection Board panel.***

The complainant had worked at a jail as a part-time cook for eight years. There was an opening at the jail for a full-time cook and a competition was held to fill the position. The complainant was one of three applicants for the position. After the position was filled, the complainant alleged to our Office that the person who had won the competition did not have volume cooking experience and was given undue advantage in the competition, as that person was advised to read and exclusively use the book from which all the questions for the interview were taken.

The Ombudsman's investigation revealed that the successful candidate had only six months' cooking experience, no volume cooking experience and had been advised by the person who chaired the Selection Board to read the Food Services Manual out of which all the interview questions were taken. The investigation also revealed that that particular candidate was lent a copy of the Manual by the same person and as a result had exclusive use of it for about two weeks. The other two candidates, however,

were not advised to read the Manual and did not have the opportunity to read it. It was also established that work experience was not given due consideration in the selection process, a fact that gave the winning candidate an advantage and the complainant a definite disadvantage.

The Ombudsman forwarded his preliminary conclusion that the complainant's allegation was justified and preliminary recommendation for suitable monetary compensation to the Deputy Minister. After serious consideration of the Deputy Minister's response, the Ombudsman confirmed his opinion in a final report to the Minister, requesting the implementation of the recommendation.

Subsequent to the Ombudsman's report to the Minister, the Ministry offered a monetary settlement. After careful consideration of the offer, the Ombudsman concluded that the offer would resolve the inequity. The complainant was most satisfied with the settlement reached.

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## SUMMARY NO. 17

***The Ombudsman will undertake an investigation on his own motion when the seriousness of allegations suggest the possibility of a systemic problem in a government agency. In this case the Ombudsman's investigation did not substantiate allegations of unfair personnel practices.***

The Ombudsman initiated this investigation on his own motion after receiving complaints from several individuals regarding allegations of unfairness in personnel practices at the Ministry of Housing. The focus of these complaints was the Corporate Policy and Planning Branch. The complaints alleged that unfair job competitions, the lack of competitions for certain positions, improper withdrawal of job duties from employees, and favoritism had resulted in poor working conditions and limited career prospects.

During the investigation, information was obtained from a variety of sources. An independent group of government employees interested in promoting employment equity made submissions. As well, various reports dealing with recruitment and advancement policies and practice were reviewed. An organizational analysis of the Branch was studied, and all employees, including three former employees, of the Branch were interviewed individually and in confidence. The files concerning three competitions held in the Branch were reviewed, and interviews also conducted with the Branch Director, the Manager of Corporate Resources Management and the Director of Human Resources.

The Ombudsman's investigation did not reveal any evidence of a systemic problem. The complaints had arisen during a period of reorganization within the Branch. In 1985, the Ministry, which had been a very stable organization for a number of years, had begun to experience rapid changes due, in part, to the change in government and new policy initiatives. Problems had surfaced within the Branch and concern had arisen over the services it provided. An independent consulting firm had been hired to conduct an organizational analysis and, as a result, the Branch had been reorganized to recognize its two basic functions: policy and planning. A more equitable distribution of the workload had been achieved, but five employees had been declared surplus. The Ombudsman's investigation revealed, however, that it was almost unanimous among the Branch employees that Branch operations and functioning had improved following the reorganization.

There was concern expressed by both employees and management over the length of time that some positions had been filled on an acting or contract basis. It appeared from the Ombudsman's investigation that this situation in the Branch was not permanent or usual, and there had been reasons for the length of these appointments. The reorganization of the Branch and the creation of new positions, followed by a period of unsettlement while certain individuals undertook grievance proceedings, had contributed to delays in filling the positions permanently. However, once the situation in the Branch had become more stable, steps had been taken to finalize job descriptions and hold competitions.

There was no evidence found of unfairness or favoritism in any of the competition files reviewed. Proper procedures, in accordance with the Ontario government Manual of Administration, had been followed. The candidates had been given equal consideration and the positions had been filled by people who certainly appeared qualified for the jobs. It was also noted that the Ministry of Housing is an active participant in employment equity initiatives and had undertaken to educate its staff in this area.

In considering the results of the investigation, the Ombudsman recognized that the Ministry had no doubt made some decisions which had affected some employees adversely, and it was also likely that some mistakes had occurred. However, he also recognized that it was not possible for any reorganization to accommodate the desires and needs of all employees.

This investigation had been undertaken on the Ombudsman's own motion because of his concern about the seriousness of the allegations. All public agencies and organizations, because of their reliance on and disbursement of public funds, have a duty to promote employment equity and to ensure that their personnel practices are free from favoritism, discrimination and unfairness. However, on the basis of the information obtained during the investigation, it was the Ombudsman's opinion that the general allegations of unfair personnel practices within the Branch were not substantiated.

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## SUMMARY NO. 18

***Through the assistance of the Ombudsman a complainant is relieved of a debt of several thousand dollars and in the process recommendations are made which are accepted by the governmental organization.***

The complainant was an uninsured driver involved in a motor vehicle accident in which a woman was hurt. Police investigated and no charges were laid against the driver. Some months later he moved to Alberta but failed to notify the Ministry of Transportation of his new address. Subsequently the woman commenced an action and the Motor Vehicle Accident Claims Fund sent a notice to the driver's last known address by registered mail. When he did not reply, a private investigator was hired and found an address in Alberta where the driver had lived for a time, and a contac. at that address who said he could reach the driver.

No further attempt was made to reach the complainant and the Fund agreed to settle the claim by debiting the complainant the sum of several thousand dollars. The complainant learned of his debt when he returned to Ontario and applied for an Ontario driver's licence. He was of the opinion that the Fund's failure to inform him of the claim had deprived him of the opportunity to defend himself.

As part of our investigation, we contacted the counterpart of the Ministry of Transportation in Alberta and learned the complainant's addresses from the time he left Ontario until he returned.

The Ombudsman entered into correspondence with the Motor Vehicle Accident Claims Fund, and ultimately concluded that the Fund was wrong not to use its best efforts to locate the driver and inform him of the claim against him, thereby complying with its obligation of fairness. The Ministry of Financial Institutions accepted the Ombudsman's consequent recommendation that, in cases where an uninsured motorist was involved in an accident and is believed to have moved out of the province, every reasonable effort should be made to ascertain the current address.

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## LAND USE/RESOURCES AND REVENUE

## SUMMARY NO. 19

***Complaints are often resolved by negotiation. In this example the Ombudsman was able to negotiate a settlement with the Ministry for a Native Band which alleged that OPP Officers had used confidential information obtained during an investigation to further their personal interests at the expense of the Band.***

When the owner of a cabin located 12 miles north of an Indian Band's Reserve died, the Band was asked to keep an eye on the cabin until it could be disposed of. The cabin was on Crown land and had been occupied under a Land Use Permit issued by the Ministry of Natural Resources (MNR). The Band Chief wrote to the Estate's Administratrix that the Band was interested in buying the cabin and contents. The Administratrix wrote to MNR asking what would be a fair price for the cabin and contents, assuming the Ministry would approve a transfer of the Land Use Permit. In her letter she gave her opinion that a minimum of $1500 U.S. would be a reasonable price. The Administratrix did not receive a reply to her letter but it was retained in MNR's Land Use Permit file.

A short time later, two OPP constables flew into the reserve on a routine visit. A handgun and bullets which a Band member had found near the cabin were turned over to the constables. In the course of enquiries to determine ownership of the gun, MNR's files were reviewed by the two constables. They saw the letter from the Administratrix stating she was considering selling the cabin to the Band for $1500 U.S. The constables offered $2000 U.S. for the cabin and fair market value for the contents. The Administratrix's offer to the Band was rescinded and the cabin was sold to the constables for $2000 U.S. About a year later, the officers offered to sell the cabin, along with a boat, motor and other items, to the Band for $15,000. It was, in fact, sold to a third party for $15,000 and that person then sold it to the Band for that sum.

The Band believed that the OPP Officers had used confidential information obtained during an investigation to further their personal interests at the expense of the Band. After pursuing the complaint with the local detachment and the OPP's Professional Standards Branch, the Band came to this Office.

As a result of our investigation, the Ombudsman found that, although the Constables became aware that the cabin was for sale through the MNR file, which was part of the public record, they only consulted those records as a result of their investigation of the hand gun and bullets. The Ombudsman tentatively found that the officers' actions in purchasing the cabin were unreasonable. He tentatively recommended that the OPP pay the Band $15,000, minus the value of the improvements, chattels, and the original purchase price of $1500 U.S. The OPP offered the Band $2,000, as it felt that the profit realized on the sale of the cabin was minimal. The Band believed that the improvements to the cabin made by the officers had not been substantial and their offer of $2,000 was unreasonable. They felt that adequate compensation would be $12,000.

Our Office negotiated with the Ministry of the Solicitor General who is responsible for the OPP, and as a result a cheque was issued to the Band for $10,000.

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## SUMMARY NO. 20

***A single mother and her family were assisted by the Ombudsman in obtaining suitable affordable housing.***

A single mother complained to our Office that although her application for a housing transfer was approved in January 1986, no suitable housing had been offered to her and her family by the local housing authority.

The complainant was living in a two-bedroom apartment with her 15-year old son and her 4-year old daughter. As well, her elderly mother, a stroke victim confined to a wheelchair, was sharing the apartment. Both the complainant and her daughter suffer from chronic respiratory problems which were aggravated by the overcrowded living conditions. She also indicated that the apartment was infested with rats and cockroaches. Although she had submitted medical documentation supporting the contention that the two bedroom accommodation was detrimental to the family's health and well-being, the housing authority had not provided her with adequate housing.

On February 22, 1988, we advised the housing authority of our intent to investigate this complaint. The housing authority responded that while sympathetic to the complainant's plight, it did not have sufficient units to adequately address the problem.

As part of our investigation, we contacted the property manager of the project and made sure that the complainant's apartment was on the treatment list for rodents and cockroaches. As well, a home visit was conducted on May 20, 1988 which confirmed the overcrowded conditions of the apartment. The complainant indicated that she had lived in this apartment for 11 years and, aside from the uncomfortable living conditions, it was very apparent that the unit posed a serious fire hazard due to the accumulation of furniture and other items over the years. Further, the complainant's mother was unable to move around in the apartment as passage for a wheelchair was not possible.

Subsequent to this visit, further discussion was held with the area supervisor and she explained that our complainant was on a priority list of overhoused and underhoused tenants. The hazardous aspects of the overcrowding were emphasized and after a further review of the matter, on May 27, 1988, we were advised that the complainant had been approved for a transfer to a four bedroom semi-detached home in an area which was acceptable to her. The complainant was satisfied with this resolution to her complaint.

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## SUMMARY NO. 21

***A transportation agency changed its decision when the Ombudsman pointed out that it did not have the legal authority to permanently ban a passenger from using its services.***

An employee of a provincial transportation authority complained to his employer that his wife and other female passengers on a bus were being intimidated by the actions of a male passenger. Following an investigation conducted by the authority, the male passenger was told while on his way to work one morning, that as a result of complaints which had been substantiated by the authority's security officer, he would not be permitted to use the transit services.

He complained to our Office that this permanent ban was unreasonable and that he had not been provided with a detailed explanation of the authority's decision.

Our investigation revealed that there may have been reasonable grounds to believe that the complainant's behaviour on the vehicle was offensive to passengers. However, the Ombudsman was of the preliminary view that the authority had failed to act fairly by not providing the complainant with adequate notice or an opportunity to make representations, prior to arriving at its decision. It was also the Ombudsman's preliminary opinion that there was no legal authority to permanently ban passengers from the transit system.

The authority reconsidered its position and agreed to allow the passenger to resume use of its services.

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## SUMMARY NO. 22

***Sometimes the Ombudsman is faced with the very difficult task of weighing private interests with those of the public. In this case, the Ombudsman concluded that the Ministry of Natural Resources was not unreasonable in requesting that a privately owned cottage be removed from public land.***

The complainant's grandfather had built a cabin on an island in the North Channel of Lake Huron some time in the early to mid-1930's. The cabin was used as a summer cottage and, in 1962, it was passed on to the complainant's father.

The Ministry became aware of the structure in 1966 and determined that a patent had not been issued for the property. Thus, the land still belonged to the Crown. Although consideration was given to selling the land to the father, the then Department of Lands and Forests felt it could not do so as a provincial policy, which came into effect in 1963, prohibited any further sale of Crown land, including islands, along the Great Lakes.

To legalize the occupation of the site and to allow the father to reap some benefits from the investment in improvements done to the cabin, the Department agreed to issue land use permits to him. When the father passed away, the Department, now the Ministry of Natural Resources, agreed to continue issuing land use permits to his daughter, subject to the condition that it would do so only for a five-year period. When this period passed, the Ministry requested that the cottage be removed from the property. The Ministry granted a further extension to the land use permits to allow the family time to relocate the cabin. When this extension expired, the daughter approached the Ombudsman for assistance.

The Ombudsman had a difficult time weighing the Ministry's arguments with those of the complainant's. On one hand, the Ministry noted that sale of Crown land on the Great Lakes had been restricted since 1963 and that this policy had been reaffirmed in the 1985 District Land Use Guidelines for the area. As well, the Ministry pointed out that it is required to retain 25% of the frontage of public lands fronting on a body of water for recreational and access purposes and this objective in the area in question was not being met.

The Ombudsman recognized the complainant's and her family's strong emotional ties to the land resulting from a 50 to 55-year occupation. He recognized too, however, that the public interest which the Ministry of Natural Resources seeks to protect, is the preservation of land in its natural state for all to enjoy. He concluded that the Ministry's decision was based on legitimate public interest concerns and recognizing the Ministry's willingness to accommodate the family through various extensions to the land use permits, the Ombudsman also concluded that the Ministry's decision to discontinue issuing land use permits in the circumstances was not unreasonable.

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## SUMMARY NO. 23

***Often when complaints are resolved the complainant, the Ministry and the public benefit. In this case the Ministry's service to the public immediately improved, after informal queries by the Ombudsman.***

The complainant contacted our Office with a complaint against the Ministry of Transportation. He felt that the local Vehicle Licensing Office practice to accept only money orders or certified cheques from the public and its refusal to accept cash was unreasonable and should be discontinued.

After being informed of this complaint by the Ombudsman, Ministry staff from Head Office contacted the local office to discuss the complaint. It was then discovered that the local staff, had for some time operated on the erroneous assumption that they could accept only money orders or certified cheques from the public. The local office was advised of Ministry procedure and policy regarding monetary transactions and now cash, as well as money orders and certified cheques, is accepted.

## SUMMARY NO. 24

***Administrative delays frequently result in complaints to the Ombudsman. In this case the Ombudsman was able to assist three farmers whose applications for grants missed the closing date for eligibility because of delays in processing the mail.***

The complainant, a dairy farmer, applied for financial assistance under a grant program administered by the Ministry of Agriculture and Food. A term of the program stipulated that a grant would not be paid if the application was received by the Ministry after a specified date. The complainant placed his completed application in the mail eight days prior to the closing date for the program. The application was not received by the Ministry until five days after the closing date, and, accordingly, the Ministry rejected it. The complainant felt this decision was unreasonable as the application had been mailed in sufficient time for it to have been received by the Ministry.

In our investigation, we examined the manner in which mail is processed at the Ministry. We learned that during the period in question, Canada Post did not pre-sort mail addressed to the Ministry of Agriculture and Food. This mail, together with other mail addressed to the provincial government, was sent to the Ministry of Government Services for sorting. Staff at that Ministry readily admitted that there was a backlog of between two and a half and four days in sorting and delivering mail. We also learned that mail was not processed for the four days following the closing date for the program as those days were holidays.

All of this information raised the possibility that our complainant's application may well have been received by the Ministry of Government Services before the closing date for the program, but because of delays in processing the mail, the application was not received by the Ministry of Agriculture and Food on time. When this information was presented to the Ministry of Agriculture and Food, it decided to accept the complainant's application and pay the grant. In addition, the Ministry approved grants for two other farmers whose applications experienced similar delays.

## SUMMARY NO. 25

***The Ombudsman's recommendation helped a deadlocked panel of the Ontario Municipal Board come to a decision. To prevent recurrences, the Ombudsman made recommendations which were adopted by the Ontario Municipal Board.***

In the Fall of 1986, the Ontario Municipal Board conducted a nine-day hearing into the complainants' objection to a municipal zoning by-law and refusal to allow for a land severance. After seven and a half months of deliberations, the Board advised the complainants that the two members of the Board who had heard the case were unable to reach a decision and that a second hearing would have to be scheduled before a new panel of the Board.

All of the parties represented at the initial hearing approached the Board requesting relief from the costs of a second hearing. This request was rejected by the Ontario Municipal Board. Since the complainants had spent $67,000 in attempting to obtain a favorable decision, they requested our assistance. The local Conservation Authority also raised similar concerns as it had incurred expenses in excess of $37,000 for professional assistance in opposing the position taken by the complainants.

After investigating the complaint, the Ombudsman advised the Ontario Municipal Board of his preliminary view that the parties should be compensated for the additional expenses resulting from the Board's practice of assigning two-member panels which in this case resulted in a deadlock. The Board reconsidered its position and the two members were able to agree upon a decision. A second hearing was thus unnecessary.

While this was certainly an unusual occurrence, in light of the Board's past record of reaching decisions in similar situations, the Ombudsman remained concerned as to the potential for a similarly deadlocked panel resulting in the additional expenses of a second hearing. The Ombudsman recommended that the Board adopt measures which would prevent this situation from occurring in the future. After considerable discussion, the Board adopted guidelines whereby potential impasses would be prevented in a timely fashion.

## CORRECTIONAL CASES

### SUMMARY NO. 26

***The Superintendent of a detention centre refused to allow a Native inmate to partake in a spiritual observance known as the sweetgrass ceremony, until the Ombudsman pointed out that this was against the Ministry's guidelines.***

A Native inmate was incarcerated in a detention centre pending charges. He requested a meeting with his Native spiritual leader to participate in a spiritual sweetgrass ceremony. His request was denied by the institutional authorities on the grounds that they considered the inmate to be a security risk.

After obtaining a legal opinion on the matter, and reviewing the Ministry of Correctional Services Manual of Standards and Procedures, the Ombudsman found that the Superintendent had not followed Ministry guidelines. He recommended, that the Superintendent follow the guidelines and also consult with Native Elders, in the matters of Native spiritual observances. The Ministry agreed to these recommendations.

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### SUMMARY NO. 27

***Misunderstandings are often cleared by an informal inquiry by the Ombudsman. In this case the Ombudsman helped an inmate obtain a Legal Aid Certificate.***

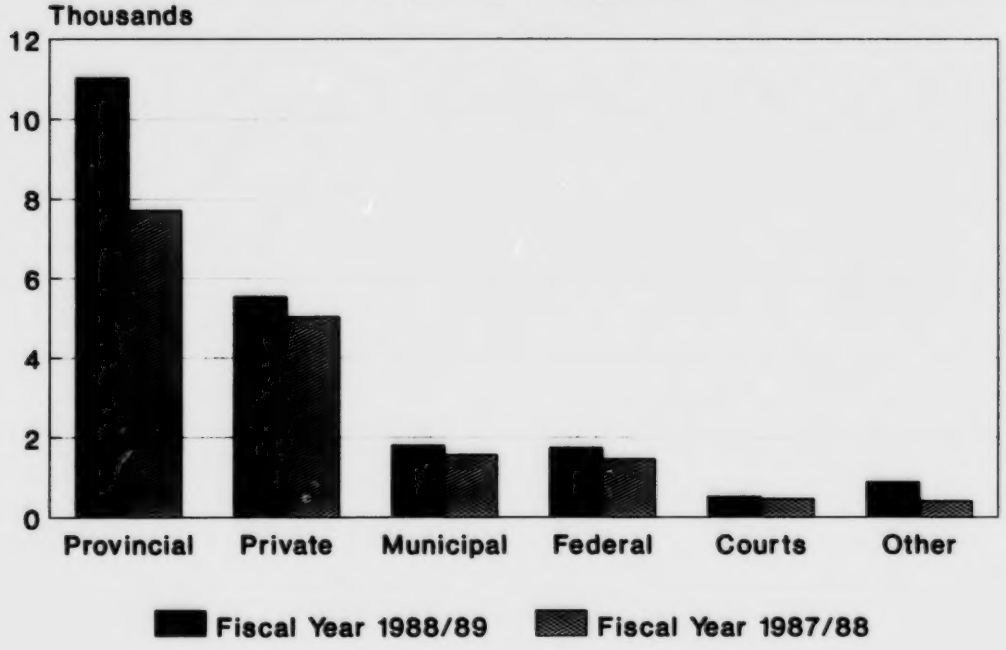
In September of 1988, an inmate incarcerated in jail called our Office requesting assistance with a number of issues. Foremost amongst his concerns was the refusal of Legal Aid staff to interview him to determine his eligibility for Legal Aid. The inmate in question was, at the time of his incarceration, being held in medical segregation because he had Hepatitis B. Legal Aid had refused to see him based on their understanding that Hepatitis B was infectious by airborne contact. Our investigator contacted an investigator with the head office of Legal Aid. The investigator at Legal Aid promised to look into the situation immediately. Subsequent to our contact, the inmate was interviewed by a staff member of Legal Aid and his certificate was issued. The inmate in question expressed his appreciation to our Office and to Legal Aid for their prompt response to his complaints.

Legal Aid staff promised to review the transmission methods of Hepatitis B with their staff in order to alleviate unnecessary concerns about the transmissibility of the disease.

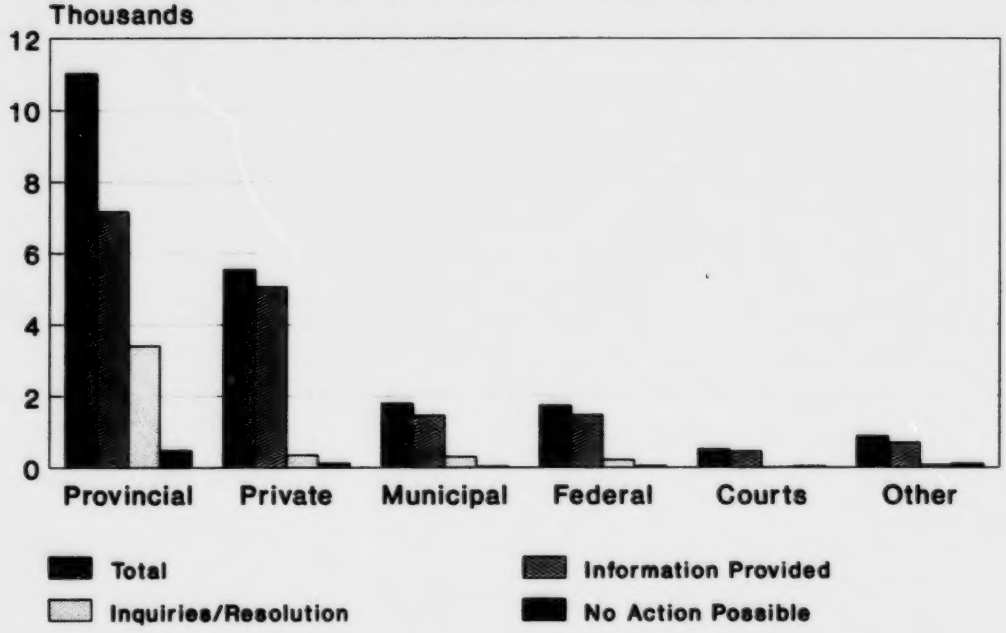
# Statistical Information

# Statistical Information

## Non-Jurisdictional Complaints/Inquiries
### Fiscal Year Comparison



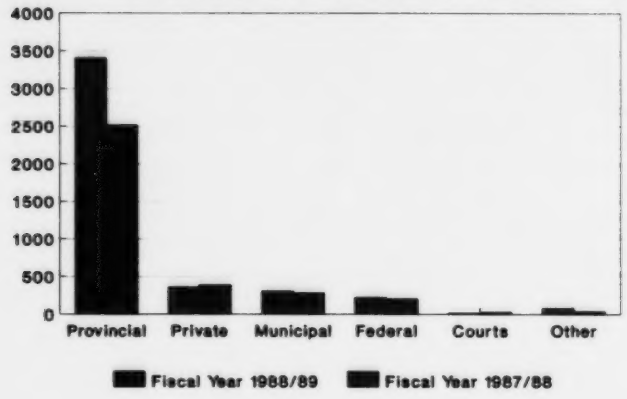

## Non-Jurisdictional Complaints/Inquiries
### Fiscal Year 1988/89 Distribution



# Statistical Information

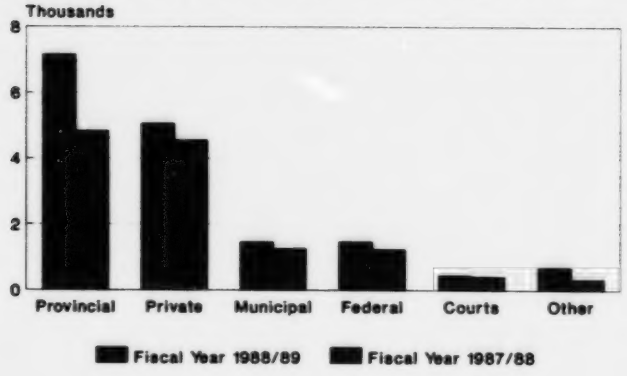
## Inquiries Made/Resolution Facilitated

Non-Jurisdictional Complaints/Inquiries



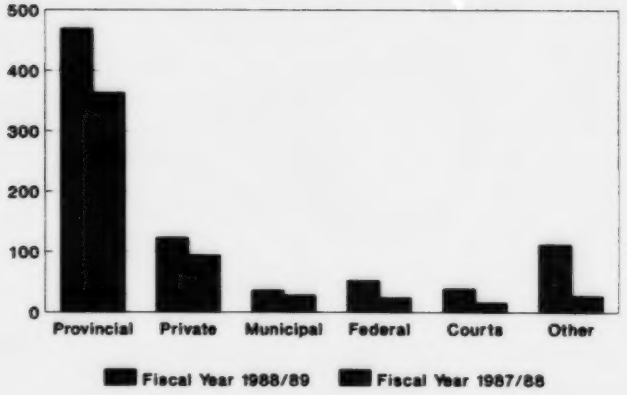

## Information Provided

Non-Jurisdictional Complaints/Inquiries




## No Action Possible

Non-Jurisdictional Complaints/Inquiries



# Statistical Information

## DISPOSITION OF JURISDICTIONAL COMPLAINTS FOR FISCAL YEAR 1988/

| ORGANIZATION COMPLAINED AGAINST | NO RECOM-MENDATION | | COMPLAINT SUPPORTED FORMAL RECOMMENDATION ACCEPTED | | DENIED | | COMPLAINANT ASSISTED | | INDEPEN-DENTLY RESOLVED | | UNSUB-STANTIATED | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1988/89 | 1987/88 | 1988/89 | 1987/88 | 1988/89 | 1987/88 | 1988/89 | 1987/88 | 1988/89 | 1987/88 | 1988/89 | 1987/88 |
| AGRICULTURE & FOOD | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 2 | 0 | 0 | 4 | 12 |
| ATTORNEY GENERAL | | | | 2 | | | 17 | 6 | 3 | 2 | 6 | 10 |
| Ontario Municipal Board | | | 2 | | | | | 8 | | | 9 | 7 |
| Public Trustee | | | | | | | 14 | 11 | | 2 | 2 | 3 |
| TOTAL ATTORNEY GENERAL | 0 | 0 | 2 | 2 | 0 | 0 | 31 | 25 | 3 | 4 | 17 | 20 |
| CITIZENSHIP | | | | | | | | | | | | |
| Human Rights Commission | | 2 | | | | | 7 | 2 | | 2 | 22 | 18 |
| TOTAL CITIZENSHIP | 0 | 2 | 0 | 0 | 0 | 0 | 7 | 2 | 0 | 2 | 22 | 18 |
| COLLEGES & UNIVERSITIES | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 12 | 0 | 1 | 6 | 4 |
| COMMUNITY & SOCIAL SERVICES | | | 1 | 1 | | | 22 | 24 | 7 | 7 | 14 | 17 |
| Social Assistance Review Board | | | | | | | 22 | 17 | 1 | 4 | 7 | 14 |
| TOTAL COMMUNITY & SOCIAL SERVICES | 0 | 0 | 1 | 1 | 0 | 0 | 44 | 41 | 8 | 11 | 21 | 31 |
| CONSUMER & COMMERCIAL RELATIONS | 1 | 0 | 0 | 0 | 0 | 0 | 43 | 15 | 7 | 1 | 35 | 17 |
| CORRECTIONAL SERVICES | 1 | | | | | | 9 | 4 | 12 | 5 | 4 | 4 |
| Correctional Centres | | | | | | | 18 | 50 | 23 | 48 | 6 | 5 |
| Detention Centres | | | | | | | 50 | 102 | 43 | 61 | 7 | 4 |
| Jails | | | 1 | | | | 59 | 81 | 29 | 67 | 2 | 3 |
| TOTAL CORRECTIONAL SERVICES | 1 | 0 | 1 | 0 | 0 | 0 | 136 | 237 | 107 | 181 | 19 | 16 |
| CULTURE & COMMUNICATIONS | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 2 | 0 | 0 | 0 | 3 |
| EDUCATION | | | | | | | 2 | 14 | | 2 | 4 | 11 |
| Teachers' Superannuation Com. | | | | 2 | 1 | | 13 | 1 | 1 | 1 | 1 | 13 |
| TOTAL EDUCATION | 0 | 0 | 0 | 2 | 1 | 0 | 15 | 15 | 1 | 3 | 5 | 24 |
| ENERGY | | | | | | | | | | | | |
| Ontario Hydro | | | | | | | 4 | 3 | | | 5 | 3 |
| TOTAL ENERGY | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 3 | 0 | 0 | 5 | 3 |
| ENVIRONMENT | 0 | 0 | 2 | 0 | 0 | 0 | 9 | 7 | 0 | 1 | 8 | 9 |
| FINANCIAL INSTITUTIONS | 0 | 0 | 2 | 0 | 0 | 0 | 32 | 9 | 0 | 1 | 33 | 4 |
| GOVERNMENT SERVICES | 0 | 0 | 0 | 0 | 0 | 0 | 7 | 9 | 5 | 0 | 8 | 7 |
| HEALTH | | 1 | 2 | | 2 | 2 | 13 | 7 | 1 | | 12 | 21 |
| Psychiatric Hospitals | | | | 1 | | | 4 | 14 | | 10 | 18 | 14 |
| O.H.I.P. | | | | | 1 | | 3 | 1 | | | 7 | 5 |
| TOTAL HEALTH | 0 | 1 | 2 | 1 | 3 | 2 | 20 | 22 | 1 | 10 | 37 | 40 |
| HOUSING | | 1 | 1 | | | 1 | 27 | 24 | | 2 | 5 | 13 |
| Ontario Housing Corporation | | | 1 | | | | 1 | 1 | | | | |
| TOTAL HOUSING | 0 | 1 | 2 | 0 | 0 | 1 | 28 | 25 | 0 | 2 | 5 | 13 |
| INDUSTRY, TRADE & TECHNOLOGY | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 1 |
| LABOUR | | | | | 1 | | 15 | 11 | 3 | | 103 | 57 |
| Workers' Compensation Board | | | 2 | 14 | | 3 | 16 | 12 | 7 | | 11 | 25 |
| TOTAL LABOUR | 0 | 0 | 2 | 14 | 1 | 3 | 31 | 23 | 10 | 0 | 114 | 82 |
| MUNICIPAL AFFAIRS | | | 1 | 1 | | | 1 | 2 | | | 3 | 1 |
| Municipal Employees Retirement Board | | | | | | | 2 | 1 | | | 4 | 2 |
| TOTAL MUNICIPAL AFFAIRS | 0 | 0 | 1 | 1 | 0 | 0 | 3 | 3 | 0 | 0 | 7 | 3 |
| NATURAL RESOURCES | 0 | 0 | 0 | 1 | 0 | 0 | 21 | 15 | 0 | 1 | 26 | 21 |
| NORTHERN DEVELOPMENT & MINES | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 1 | 0 | 0 | 1 | 3 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 | 7 | 7 | 2 | 0 | 4 | 5 |
| SKILLS DEVELOPMENT | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 3 | 0 | 0 | 0 | 0 |
| SOLICITOR GENERAL | 0 | 0 | 4 | 1 | 0 | 0 | 4 | 3 | 0 | 0 | 9 | 7 |
| TOURISM & RECREATION | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 1 | 5 | 2 |
| TRANSPORTATION | 0 | 0 | 0 | 0 | 0 | 0 | 21 | 20 | 1 | 1 | 12 | 19 |
| ONTARIO GOVERNMENT OTHER | 0 | 0 | 0 | 1 | 0 | 0 | 4 | 1 | 0 | 0 | 5 | 1 |
| TOTAL ONTARIO GOVERNMENT | 2 | 4 | 19 | 24 | 6 | 6 | 482 | 505 | 145 | 220 | 411 | 365 |

## 1989 WITH COMPARATIVE NUMBERS

| INVESTIGATION DISCONTINUED | | | | | | | |
|---|---|---|---|---|---|---|---|
| ABANDONED | | WITHDRAWN | | SECTION 18 | | TOTAL | |
| 1988/89 | 1987/88 | 1988/89 | 1987/88 | 1988/89 | 1987/88 | 1988/89 | 1987/88 |
| 5 | 1 | 7 | 4 | 14 | 4 | 32 | 23 |
| 6 | 2 | 5 | 2 | 22 | 9 | 59 | 33 |
| 1 | 1 | 3 | 5 | 7 | 13 | 22 | 34 |
| 1 | 2 | 3 | 3 | 5 | 3 | 25 | 24 |
| 8 | 5 | 11 | 10 | 34 | 25 | 106 | 91 |
| 3 | 3 | 7 | 1 | 7 | 7 | 46 | 35 |
| 3 | 3 | 7 | 1 | 7 | 7 | 46 | 35 |
| 5 | 6 | 3 | 1 | 7 | 7 | 26 | 31 |
| 13 | 5 | 5 | 26 | 24 | 58 | 86 | 138 |
| 2 | 3 | 1 | 4 | 12 | 15 | 45 | 57 |
| 15 | 8 | 6 | 30 | 36 | 73 | 131 | 195 |
| 2 | 9 | 6 | 6 | 23 | 19 | 117 | 67 |
| 8 | 25 | 2 | 18 | 50 | 38 | 86 | 94 |
| 66 | 95 | 33 | 166 | 288 | 295 | 434 | 659 |
| 127 | 229 | 53 | 256 | 613 | 613 | 893 | 1265 |
| 120 | 203 | 37 | 145 | 466 | 474 | 714 | 973 |
| 321 | 552 | 125 | 585 | 1417 | 1420 | 2127 | 2991 |
| 0 | 0 | 1 | 1 | 1 | 2 | 5 | 8 |
|  | 1 | 4 | 1 | 22 | 3 | 32 | 32 |
|  | 1 | 1 | 1 | 22 | 19 | 39 | 38 |
| 0 | 2 | 5 | 2 | 44 | 22 | 71 | 70 |
|  |  |  |  |  | 3 | 0 | 3 |
| 1 |  |  | 3 | 3 | 3 | 13 | 12 |
| 1 | 0 | 0 | 3 | 3 | 6 | 13 | 15 |
| 1 | 2 | 3 | 9 | 8 | 8 | 31 | 36 |
| 1 | 2 | 5 | 5 | 37 | 158 | 110 | 179 |
| 1 | 3 | 3 | 2 | 11 | 17 | 35 | 38 |
| 8 | 4 | 8 | 10 | 18 | 24 | 64 | 69 |
| 5 | 21 | 5 | 19 | 4 | 17 | 36 | 96 |
| 2 | 1 | 1 | 3 | 7 | 5 | 21 | 15 |
| 15 | 26 | 14 | 32 | 29 | 46 | 121 | 180 |
| 2 | 7 | 15 | 23 | 16 | 17 | 66 | 88 |
|  | 1 |  | 1 | 1 |  | 3 | 3 |
| 2 | 8 | 15 | 24 | 17 | 17 | 69 | 91 |
| 0 | 0 | 0 | 4 | 0 | 1 | 3 | 6 |
| 1 | 3 | 17 | 10 | 18 | 16 | 158 | 97 |
| 3 | 4 | 10 | 6 | 6 | 28 | 55 | 92 |
| 4 | 7 | 27 | 16 | 24 | 44 | 213 | 189 |
| 1 | 3 | 7 | 3 | 8 | 8 | 21 | 18 |
|  |  |  | 1 |  | 1 | 6 | 5 |
| 1 | 3 | 7 | 4 | 8 | 9 | 27 | 23 |
| 2 | 9 | 14 | 29 | 14 | 14 | 77 | 90 |
| 1 | 0 | 0 | 2 | 0 | 3 | 7 | 9 |
| 1 | 3 | 5 | 10 | 6 | 16 | 25 | 41 |
| 1 | 1 | 0 | 0 | 2 | 1 | 4 | 5 |
| 0 | 6 | 2 | 10 | 5 | 17 | 24 | 44 |
| 0 | 1 | 2 | 1 | 1 | 2 | 8 | 10 |
| 5 | 7 | 15 | 19 | 17 | 30 | 71 | 96 |
| 0 | 0 | 0 | 2 | 5 | 4 | 14 | 9 |
| 395 | 664 | 283 | 812 | 1770 | 1972 | 3513 | 4572 |

## GLOSSARY

### COMPLAINT SUPPORTED

**NO RECOMMENDATION** — At times the Ombudsman will support a complaint but decide no recommendation is appropriate given all the circumstances.

**FORMAL RECOMMENDATION ACCEPTED** — Those complaints where the governmental organization agrees to implement the Ombudsman's recommendation.

**FORMAL RECOMMENDATION DENIED** — Those complaints where the governmental organization refuses to implement the Ombudsman's recommendation.

**COMPLAINANT ASSISTED** — Those complaints where the Ombudsman renders assistance and usually involve tangible corrective action taken by the governmental organization.

**INDEPENDENTLY RESOLVED** — Many complaints are resolved independent of the Ombudsman's involvement. This can occur at any point in the investigative process prior to the Ombudsman issuing a final report.

**UNSUBSTANTIATED** — Those complaints where the Ombudsman's investigation reveals no grounds to support the complainant's contention.

**INVESTIGATION DISCONTINUED** — The Ombudsman uses his discretion to discontinue an investigation at any point prior to issuing a final report for a number of reasons:

**ABANDONED** — Attempts to communicate with the complainant are unsuccessful (eg., complaints from inmates of correctional facilities who are released in the course of our investigation and leave no forwarding address).

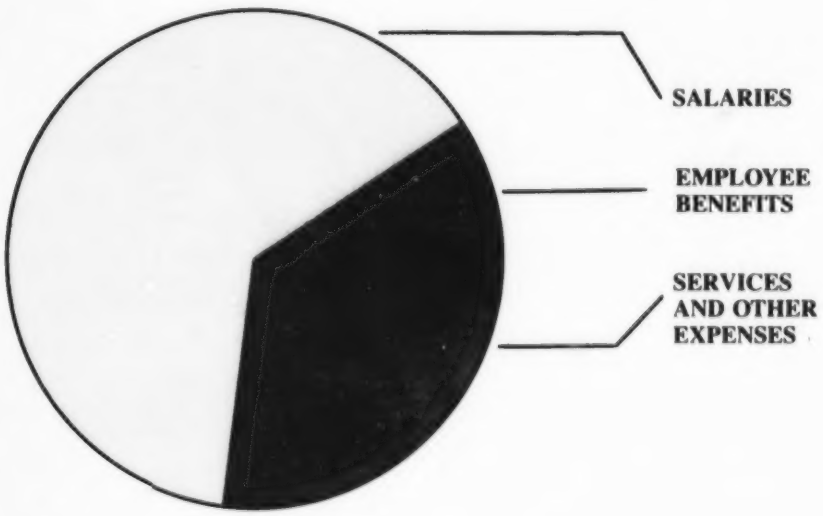
**WITHDRAWN** — At the request of the complainant. In many cases information is provided to the complainant and, although there is no resolution the complainant does not wish us to pursue the matter.

**SECTION 18** — Refers to Section 18 of the **Ombudsman Act** which allows the Ombudsman the discretion to discontinue if, for example, there is an adequate alternative remedy or the complaint is frivolous or having regard to all the circumstances no further investigation is necessary.

# Statistical Information

## DISPOSITION OF NON-JURISDICTIONAL COMPLAINTS, INFORMATION REQUESTS/SUBMISSIONS FISCAL YEAR 1988/89, WITH COMPARATIVE NUMBERS

| Organization | Information Provided | | Inquiries Made/ Resolution Facilitated | | No Action Possible | | Total | | Percent | |
|---|---|---|---|---|---|---|---|---|---|---|
| | **1988/89** | 1987/88 | **1988/89** | 1987/88 | **1988/89** | 1987/88 | **1988/89** | 1987/88 | **1988/89** | 1987/88 |
| Provincial | **7156** | 4827 | **3405** | 2512 | **469** | 363 | **11030** | 7702 | **51.3** | 46.4 |
| Private | **5058** | 4546 | **355** | 386 | **123** | 94 | **5536** | 5026 | **25.8** | 30.3 |
| Municipal | **1458** | 1250 | **302** | 280 | **36** | 28 | **1796** | 1558 | **8.3** | 9.4 |
| Federal | **1464** | 1232 | **219** | 200 | **52** | 24 | **1735** | 1456 | **8.1** | 8.8 |
| Courts & Judges | **454** | 413 | **17** | 28 | **39** | 16 | **510** | 457 | **2.4** | 2.7 |
| Other | **688** | 335 | **78** | 40 | **112** | 27 | **878** | 402 | **4.1** | 2.4 |
| **TOTAL** | **16278** | 12603 | **4376** | 3446 | **831** | 552 | **21485** | 16601 | **100.0** | 100.0 |




## ACTUAL EXPENDITURES FOR THE FISCAL YEAR 1988-89

| | | | |
|---|---|---|---|
| Salaries | $4,569,834 | Other Services | 167,996 |
| Employee Benefits | 598,482 | Furniture & Office Equipment | 48,490 |
| Travel & Relocation | 142,887 | Computer Equipment & Software | 273,888 |
| Telephone, Mailing & Delivery | 242,944 | Office Supplies & Devices | 76,261 |
| Building Rent | 586,218 | Books & Publications | 31,265 |
| Equipment & Other Rentals | 106,306 | Printing of Reports & Procedures | 42,295 |
| Professional Services | 63,603 | Other Supplies & Equipment | 50,142 |
| Security Services | 34,032 | | |
| Computer Equipment & Software Maintenance | 67,057 | | |

**TOTAL $7,101,700**

## PART II

## RECOMMENDATIONS DENIED

Part II is devoted entirely to detailed summaries of cases where the recommendation of the Ombudsman was denied by the governmental organization.

Tables of recommendations outstanding from previous reports are included as appendices.

## DETAILED SUMMARY NO. 1

On May 21, 1987 Mr. T contacted one of our representatives and requested that we investigate his objection to a decision of the Workers' Compensation Appeals Tribunal (WCAT) dated May 29, 1986.

By letter dated July 13, 1987, we advised the WCAT of our intention to investigate Mr. T's contention that the decision of May 29, 1986 was, in part, unreasonable in that it dated his entitlement to an allowance for clothing alterations from November, 1985. In its response, dated July 16, 1987, the Tribunal advised that it had no further statement to make and, in due course, photocopies of Mr. T's WCAT file, as well as his Workers' Compensation Board (WCB) claim file, were obtained by our Office.

Mr. T's file was assigned to a member of our investigative staff, who thoroughly reviewed the information contained in Mr. T's claim files and discussed the information with him. As well, she reviewed WCB policy and legislation.

During the course of our investigation, it appeared that Dr. Hill, the former Ombudsman, might support Mr. T's contention and make a report and recommendation that might adversely affect the Tribunal and the accident employer. Therefore, on August 4, 1988 he notified both parties of his views and invited them to make further representations to him if they so wished.

On the basis of the information available to him, Dr. Hill considered the following conclusion and recommendation:

**Possible Conclusion:**
In view of the broad definition of rehabilitation accepted by the Panel as the basis for allowing Mr. T's appeal, the WCAT decision granting Mr. T entitlement to an allowance for clothing is unreasonable, in part, as it allows this entitlement only from November, 1985. [Reference: *Ombudsman Act*, section 22(1)(b)]

**Possible Recommendation:**
The WCAT should reconsider with a view to amending its decision so that Mr. T's entitlement to an allowance for clothing alterations dates from December 17, 1982, the date on which his permanent disability was assessed at 85% by the Workers' Compensation Board's (WCB) Rating Committee. [Reference: *Ombudsman Act*, section 22(3)(g)]

This possible conclusion and recommendation were based on the following information.

Mr. T had been employed since April, 1967 as a stockman/receiver for the accident employer. On February 4, 1972, at age 27, he fell from a ramp and caught himself with his left hand. This caused a dislocation of his left shoulder. It was noted that Mr. T had previously experienced a left shoulder dislocation which had been surgically corrected. His claim was accepted by the WCB but, eventually, 50% relief from the Second Injury and Enhancement Fund was granted to the employer because of his pre-existing condition. This was later increased to 75%.

Mr. T returned to work on two occasions (September, 1972 to July, 1973 and February to July, 1974). However, each time, he was unable to continue working due to problems with his shoulder.

These shoulder problems continued to plague Mr. T and over the next 10 years he underwent a series of unsuccessful operations:

1. May 3, 1972 - Putti-Platt repair.
2. October 3, 1973 - Putti-Platt repair.
3. September 25, 1974 - de-rotation osteotomy of the left humerus with the insertion of a metallic plate and screws, and Putti-Platt repair.
4. May 12, 1976 - removal of the metallic plate and screws, and manipulation of the shoulder.
5. September 23, 1976 - left shoulder arthroplasty with removal of the humeral head and the insertion of a Neer prosthesis.

6. July 13, 1977 - total left shoulder replacement due to the failure of the Neer prosthesis.

7. December 2, 1977 - removal of the total shoulder prosthesis which had also failed.

8. February 18, 1981 - left shoulder fusion using a bone graft taken from his left iliac crest.

9. September 15, 1982 - removal of the hardware used in the shoulder fusion.

Mr. T's surgeries were performed by Dr. A, an orthopaedic surgeon at Scarborough General Hospital. Mr. T was admitted to the Board's Downsview Rehabilitation Centre in 1977; however, following a further dislocation of his shoulder, he was discharged on June 8th as unfit to resume work. As well, Mr. T has been seen by Dr. B, a local orthopaedic surgeon, and Dr. C, an orthopaedist in southern Ontario.

In the intervals between operations, Mr. T also had to cope with related complications, such as nerve problems; numbness; muscle atrophy; fractures which would not unite due to loss of bone density; prostheses which tended to subluxate; loss of strength and movement in his left arm; development of a haematoma in his shoulder; paraesthesia of his left hand; spasms; sleeping difficulties; and an addiction to certain medication. As well, Mr. T was, and still is, experiencing pain on a continual basis.

The surgeries eventually left Mr. T with a painful, non-functional, flail (hanging) left shoulder and permanent pseudarthrosis (false joint due to the inability of the bone to form normal callus). His left arm is 4" to 5" shorter than his right arm. The circumference is approximately 3" less in the upper arm and 1-1/2" smaller in the forearm. As well, due to extreme wasting of the muscles, the contour and slope of his shoulder has been drastically affected.

Mr. T remained on temporary total benefits until he was assessed for a permanent disability award on December 17, 1982. At that time, his disability was rated at 85% (70% for his left shoulder and arm; 5% for the donor site of the bone graft; 10% for the psychological effects associated with the injury and the procedures carried out over the years). Full arrears were granted. Although, in 1979, Mr. T had been assessed as having a 35% permanent disability, this was later determined to have been a premature rating, and temporary total benefits were restored and back-dated within a short period of time.

On September 16, 1984 Mr. T wrote to the WCB and requested additional funds to cover his increased clothing costs. Because of his left shoulder and arm configuration, he had to have clothes for the upper half of his body tailor-made. In his letter, Mr. T stated that he had been buying special clothing since March, 1983 when he needed a suit to wear to a funeral and nothing off the rack would fit him. Mr. T later stated that he had had to have some clothing altered as far back as 1976; however, in the beginning, these were mostly minor alterations to sleeve length. As time went on, due to further surgeries and deterioration in his arm and shoulder, the required alterations became more extensive and costly.

Internal memoranda from the WCB's file show that, following receipt of Mr. T's request, a Rehabilitation Counsellor, as well as an Adjudicator and Team Coordinator from the Health Care Benefits Branch, were of the opinion that Mr. T should have received special consideration and been granted an allowance for clothing. Unfortunately, this opinion was not supported at higher levels within the WCB as it was felt that there was no authorization under the *Workers' Compensation Act* to make such a payment.

In denying Mr. T's request, the Board originally relied on the "clothing allowance policy" under section 52 of the Act, which provides for payment for the replacement or repair of clothing worn or damaged when the worker wears a limb prosthesis or brace. As there was no provision dealing with modification to clothing and Mr. T did not have a prosthesis or brace, it was decided that he was not entitled to an allowance. Although evidence was presented that payments for tailoring clothes to accommodate a difference in arm circumference previously had been awarded by an Appeal Board panel in another case, the WCB did not consider this decision as a precedent.

The denial of Mr. T's request was upheld by the Board's Appeals Adjudicator in a decision dated September 4, 1985. The Adjudicator determined that the clothing allowance described under section 52 was not applicable in Mr. T's case. As well, it was decided that section 54 was not applicable as Mr. T was not involved with the Vocational Rehabilitation Branch at the time. Section 54 states, in part, as follows:

> To aid in getting injured workers back to work and to assist in lessening or removing any handicap resulting from their injuries, the Board may take such measures and make such expenditures as it may deem necessary or expedient . . .

Mr. T appealed the decision of the Appeals Adjudicator to the WCAT and a hearing was held on February 27, 1986. Evidence was presented that Mr. T, who had been involved from time to time since March, 1975 with the Board's Vocational Rehabilitation Division, had begun an educational upgrading course at a local college. He had enrolled in November, 1985 with a view to taking a real estate course. Also presented in evidence was documentation that he had been purchasing tailor-made clothing from a particular store since June, 1983.

In its decision of May 29, 1986, the WCAT Panel allowed Mr. T's appeal and decided:

> The worker is entitled to the difference between the cost of ready-made and tailor-made clothing *from November, 1985, and ongoing*, for the clothing he would wear in public, subject to prior authorization by the WCB. This includes the cost of any clothing bought prior to the start of the worker's upgrading course that was bought for the purposes of the course. [Emphasis added]

In reaching this decision, the Panel accepted that the Board's definition of rehabilitation was quite broad and concluded "that a clothing allowance from the time the worker began the course is appropriate in the circumstances, and satisfies section 54."

The WCB complied with the Panel's decision and, in the absence of receipts, Vocational Rehabilitation Services paid to Mr. T the equivalent of the maximum which would be payable to a worker receiving a "clothing allowance" under section 52 for the period November, 1985 to November, 1986. The Board advised that each November Mr. T would automatically receive a sum equal to the yearly clothing allowance; however, if he were to present receipts for expenditures in excess of this amount, an upward adjustment would be considered.

Mr. T was pleased that his request for additional benefits to offset the cost of his clothing had been granted, but he was not satisfied that the award was dated from November, 1985. Therefore, he requested that the Tribunal reconsider its decision with a view to awarding payment retroactive to 1976. In its letter of June 10, 1987, the Tribunal replied that his request for reconsideration did not meet the strict standard applied to these requests.

In formulating his possible conclusion and recommendation in this case, Dr. Hill considered the information contained in Mr. T's WCAT and WCB claim files, as well as WCB policy and legislation with respect to section 54. He noted that, in reaching its decision, the WCAT had access to and considered this information as well. Indeed, it is stated in the decision that "the Panel heard and considered evidence under oath by the worker in oral testimony and read the relevant forms, memoranda, reports and medical reports extracted from the WCB file which were marked as Exhibit #1 at the hearing." Therefore, his tentative conclusion was reached, not on the basis of any new evidence, but on his examination of the Panel's reasoning, the legislation and WCB policy.

In support of Dr. Hill's possible conclusion and recommendation, the findings of our investigation and his observations were summarized as follows.

The Panel had noted that Mr. T's whole left side was altered by his disability and that this would be apparent when he went out in public. It had also been noted that this had resulted in "understandable problems with anxiety and depression", and the Panel was of the view that "appropriate clothing may be an important step in developing the worker's sense of self-confidence and social acceptability."

The Panel had also noted the Board's definition of rehabilitation, as stated in its policy, as follows:

> . . . it is the cultivation, restoration and conservation of human resources, assisting those who are handicapped by disease, disability or social maladjustment to achieve a state of maximum well-being.

The Panel had accepted this as a broad definition of rehabilitation and concluded that payment for additional clothing costs could be made to Mr. T under section 54. However, the Panel interpreted the definition further and stated:

> However, the Panel is concerned that the clothing allowance should not be restricted to the period that the worker is attending the course. To so restrict the allowance is to apply a narrow definition of rehabilitation which is contrary to the Board's broad definition. The Board's definition can be summarized as assistance in restoring a handicapped worker's ability to function in the workforce or elsewhere . . . The Panel finds that it is important for the worker to be suitably dressed in order to lessen his handicap and to function properly. Thus, we conclude that the worker should continue to be provided with a clothing allowance in the future once his courses are completed.
>
> This conclusion is also in keeping with section 54 of the Act since it will aid in lessening the worker's handicap which has resulted from his work injury.

Despite its opinion that the allowance should not be restricted to the period of the training course, the Panel, in deciding that the allowance should date from the time when Mr. T began his classes, nevertheless tied the award to the course and to his re-employment efforts. Dr. Hill was of the tentative opinion that this was unreasonable.

The Panel's reasoning in providing for the continuation of the allowance beyond the completion of his course applies equally well to the time prior to November, 1985. In its decision, the Panel offered no clear reason for choosing the date it did, thereby implying that the start of the upgrading course was the basis for its decision. Dr. Hill believed that the Panel's decision in this matter was illogical and inconsistent with its own reasoning.

Dr. Hill shared the Panel's opinion that the Board's definition of rehabilitation is a broad one and that section 54 provides the authority for Mr. T to receive a special clothing payment. When it originally denied Mr. T's request, the WCB did so because it believed section 54 was not applicable as he was not involved with the Vocational Rehabilitation Division at the time. The WCAT Panel later determined that Section 54 did provide the necessary authority and that the special allowance should not be restricted to the period of his course; however, due consideration was not given to selecting the most appropriate date for the commencement of the award.

On reviewing the legislation, we found no stipulation in section 54 that the worker must be cooperating with, actively involved in, or available for a vocational rehabilitation program. However, the legislation does place these qualifying criteria on certain other benefits, such as the receipt of a supplement under section 45(5). By omitting such a restriction under section 54, Dr. Hill believed that it was not intended that the Board's ability to extend assistance "in lessening or removing any handicap resulting from [the worker's] injuries" should be hampered or limited by the worker's re-employment efforts. Expenditures may be made under section 54 as the Board "may deem necessary or expedient."

The Board's policy regarding section 54 supports this interpretation, as is demonstrated by the following excerpt from its Manual:

> The philosophy of vocational rehabilitation which has been adopted by the Board is:
>
> The cultivation, conservation and restoration of the knowledge, skills, attitudes and physical well-being of the injured worker.
>
> The use of all appropriate sciences and disciplines to aid persons handicapped by industrial disease, disability *and/or social maladjustment* arising out of the condition.
>
> The provision of Vocational Rehabilitation services to enable the injured worker to become capable of pursuing gainful employment *and/or to aid in lessening any handicap resulting from the compensable injury or condition*. [Emphasis added]

By the use of "and/or" the Board's philosophy clearly separates the worker's pursuit of gainful employment from aid in lessening any handicap. The Board's policy also sets out 10 definitions of workers who are eligible for section 54 benefits. Only one of these states that the worker must be cooperating in the Vocational Rehabilitation process, and that definition does not apply to Mr. T as it concerns workers who are temporarily, partially disabled and who may not have any indication of permanent disability. Mr. T is, of course, permanently disabled as a result of his injury, and had been awarded an 85% pension by the time he made his request for the clothing allowance.

As indicated in the Board's philosophy, aid in enabling workers to return to gainful employment is only one of many services which can be provided under section 54. Therefore, the legislation and Board policy provide the means to furnish Mr. T with additional funds to cover the increased costs of his clothes, without necessitating his active involvement in a Vocational Rehabilitation program. Even if this were not the case, as the Board's psychiatrist, Dr. F, noted after examining Mr. T in December, 1982:

> His reluctance [to be involved in retraining] is perhaps understandable in view of the constantly recurring surgeries, hospitalizations, and investigations as well as the chronic pain which he has undoubtedly suffered for years.

Having tentatively concluded that November, 1985 was not a reasonable date for the Panel to have chosen for the commencement of Mr. T's allowance, Dr. Hill addressed the question of what would be an appropriate date. Various dates presented themselves: the dates of Mr. T's many surgeries; the date of his first letter to the WCB in 1984 requesting an allowance; the date in 1983 on which he stated he first bought a tailor-made suit jacket; the 1976 date which he requested when he asked the WCAT to reconsider its decision; the pension assessment date in 1982.

In Dr. Hill's view, the logical date for such an award to begin was December, 1982 when Mr. T was assessed by a team of Board doctors and granted an 85% permanent disability award. Although Mr. T's deformity existed prior to this, it was on this date that the Board acknowledged that his condition was permanent and that the disability was substantial. The shortening of his left arm and the smaller circumference were confirmed by Drs. D and E, as well as "very marked and extreme contour change of the left shoulder region due to very profound and almost complete wasting of the shoulder girdle musculature."

At that time, Mr. T had also been seen by the psychiatrist, Dr. F, who noted "the disfiguring effects of the multiple unsuccessful surgeries." Ten per cent of Mr. T's permanent disability award is to compensate him for chronic low-grade depression and an anxiety state associated with his medical treatment over the years. Therefore, it appeared that the permanent disability assessment date would have been an appropriate time to have determined that to supply Mr. T with the means to purchase suitable clothing would have been important to his self-esteem and social rehabilitation.

Also, the permanent disability assessment is evidence that by December, 1982 Mr. T's condition was deemed to have stabilized. The WCB commonly conducts these assessments when treatment is concluded, the condition is stable and maximum recovery from a medical standpoint has occurred. In accordance with the Board's policy on permanent disability ratings, the applicability of supplementary awards is normally addressed at the time of the rating. For instance, where a worker has entitlement to a "clothing allowance" under section 52, this would be covered at the time of the rating in the interview with the Board's Pension Adjudicator.

Dr. Hill also noted that Mr. T's last surgery occurred in September, 1982. Prior to this, his condition had changed with each successive surgery. He had also spent a great deal of time with his arm in a sling. It would have been difficult to choose a date for the commencement of clothing payments during the period from 1972 to 1982 as his condition was not stable and he underwent various forms of medical treatment. As well, Mr. T acknowledged that his earlier alteration costs were of a more minor nature. He did not incur significant expense until early 1983 which would be in keeping with an award dating from December, 1982.

For these reasons it was Dr. Hill's tentative opinion that the pension assessment date, December 17, 1982, presented as the most reasonable date on which to have awarded Mr. T his special allowance for clothing. Therefore, he tentatively concluded that the WCAT decision was, in part, unreasonable in that it dated the award from November, 1985.

On October 13, 1988 we received a letter from the employer's representative seeking clarification that any additional benefits Mr. T might be awarded would be charged to section 54 of the *Workers' Compensation Act*. The investigator responded that, if these additional benefits were awarded, they would be provided under section 54. No further submissions were received from the employer regarding Dr. Hill's tentative conclusion and recommendation.

The Tribunal's response, dated September 29, 1988, was received from Mr. Ron Ellis, Chairman, on October 17, 1988. Unfortunately, Mr. Ellis did not address the merits of Mr. T's case. Rather, he advised us of the WCAT's "appropriate institutional response" to letters which we might issue pursuant to section 19(3) of the *Ombudsman Act*. Mr. Ellis wrote as follows:

> In my view, it would not be appropriate for the Appeals Tribunal to make representations concerning your possible recommendation. This would in effect constitute either a defence of the Tribunal's decision (which we cannot properly embark upon since the Tribunal's reasons for its decision are set out in the decision itself) or concessions respecting the merits of the criticism contained in your letter, — concessions which we, of course, cannot make without resorting to an exercise of our power to reconsider involving the complete process that we have established for that purpose.
>
> Accordingly, after careful consideration, I have come to the view that the appropriate position for the Appeals Tribunal is to refrain from making representations concerning the criticisms at this stage of your process. Again, we can only refer to and rely on the reasons set out in the decision.

Mr. Ellis reserved his final decision on this matter until his receipt of the Ombudsman's final report.

In reviewing this matter, Dr. Hill considered administrative law and natural justice in relation to quasi-judicial tribunals. Although he believed that Mr. Ellis may have been taking an excessively rigid and narrow view on this matter, he nevertheless recognized that Mr. Ellis would not wish the Tribunal to take any action which would violate two fundamental precepts of natural justice: namely, a fair hearing and an unbiased decision-maker. However, we must not make the assumption that even the most expert and principled tribunals are infallible. If that were the case, there would be no need for courts of review or Ombudsmen.

This case illustrated an incompatibility between the Ombudsman process and the administrative law principles underpinning quasi-judicial Tribunals. We consider the Ombudsman's mandate to be remedial in terms of the merits of each case and the types of recommendations made. Unlike reviewing courts, we do examine the merits, as well as the process, of a case and it is open to the Ombudsman to decide that a decision of a provincial governmental organization may be wrong or unreasonable on its merits. However, Dr. Hill had no wish to create an impression of bias or prejudice on the part of the Tribunal by making a recommendation which, if implemented, might be considered a breach of its principles.

In the absence of any representations respecting the merits of this case, Dr. Hill remained of the view that the Tribunal gave no good reasons for dating Mr. T's award from November, 1985 and, in fact, failed to follow its own reasoning and did not adequately address itself to the issue of the most appropriate date for the commencement of the award. For the reasons outlined in his report, it was Dr. Hill's opinion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that the decision of May 29, 1986 was unreasonable with respect to the date chosen for Mr. T's award to begin. He believed that December 17, 1982, the date on which his permanent disability was assessed at 85% by the WCB, was the logical date for the commencement of the award.

Our understanding is that, pursuant to sections 76 and 86(m) of the *Workers' Compensation Act*, the WCAT may, at any time it considers it advisable to do so, reconsider any decision made by it and vary, amend or revoke such decision. As well, in accordance with the Tribunal's Practice Direction No. 8, reconsideration may originate from the Tribunal rather than from one of the parties of record.

Therefore, Dr. Hill recommended, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the WCAT appoint a Reconsideration Panel as expeditiously as possible to reconsider its decision of May 29, 1986 on the basis of the information contained in his report.

Dr. Hill's report was sent to the WCAT and to the Minister of Labour on December 6, 1988. The Tribunal's response was received by letter dated January 6, 1989. The Chairman of the WCAT explained the two-stage procedure which has been adopted by the WCAT in exercising its reconsideration powers. The first stage is a consideration of whether or not it is "advisable" to re-open and again consider the case. This is referred to by the WCAT as the "threshold question". The second stage is the actual reconsideration, if it has been decided that this would be "advisable". The Chairman stated that the finality of WCAT decisions is in the interest of workers, employers and the public, and this makes the threshold decision very important. It was noted that the Ombudsman's recommendation, if implemented, would take the Tribunal automatically past the threshold question to the reconsideration itself; however, the Chairman wrote that the Tribunal cannot refer a matter directly to a reconsideration panel without first deciding that it is "advisable" to do so. Therefore, in response to Dr. Hill's recommendation, the Chairman proposed the following:

1. The Tribunal Chairman will establish a Tribunal hearing panel for the purpose of determining the following generic question (hereafter referred to as the "first question"):

    1. Is the fact that the Ombudsman has issued an investigative report that is supportive of a complaint to the Ombudsman concerning the merits of a Tribunal decision sufficient reason, in and of itself and irrespective of the Report's [sic] content, for the Tribunal to conclude that it is advisable for the Tribunal to engage in a reconsideration of that decision?

2. If the answer to that question is yes, then, pursuant to Practice Direction No. 8, the Tribunal Chairman will next establish a panel for the purpose of reconsidering Decision No. 95 in the [sic] light of your investigative report and determining whether, in light of your report, that decision should be varied, amended or revoked, or left unchanged.

3. If the answer to the first question is no, then the Tribunal Chairman will establish a panel to make the usual threshold decision in response to the following second question:

2. Does the content of the Ombudsman's report on *Decision No. 95* provide sufficient reason for the Tribunal to conclude that it is advisable for the Tribunal to engage in a reconsideration of that Decision?

4. If the answer to this second question is yes, the same panel will proceed to reconsider *Decision No. 95* and to determine whether, in light of the Ombudsman's report, the decision should be varied, amended or revoked, or not changed. If the panel's answer to the second question is no, then that, of course, will be the end of the matter, as far as the Tribunal is concerned.

While we appreciated the Tribunal's concerns regarding the manner in which it should deal with the Ombudsman's report, the Ombudsman's obligation is to fulfill the duty and function entrusted to him/her by the Legislature under the *Ombudsman Act*. Therefore, we did not believe that it was appropriate to wait while the WCAT implemented an elaborate process to determine whether reconsideration was appropriate. The extensive procedures suggested by the Chairman could not, in our opinion, provide a prompt resolution of Mr. T's case. Therefore, pursuant to sections 22(4) and (5) of the *Ombudsman Act*, Dr. Hill referred the matter to the Premier on January 17, 1989. Mr. T was also advised of the results of the investigation.

Subsequently, in order to minimize any delay and inconvenience to those involved, the WCAT decided that one panel would hold a hearing wherein it would consider all the issues set out in the Chairman's response to Dr. Hill's report, rather than establish separate panels and hearing dates to answer each question.

It was suggested that the Ombudsman might want to make submissions to this hearing panel. However, I advised the WCAT that, in view of the Ombudsman's duty of impartiality and the fact that any decision of the Tribunal could potentially be investigated by my Office, it followed that we could not be a party to any Tribunal hearing. Such participation would taint the objectivity central to the Ombudsman's mandate.

The Tribunal's hearing was held on April 13, 1989, prior to the publication of this Annual Report, and some members of my staff attended as observers. At the time this publication was prepared, the WCAT had not yet issued its written decision. However, an oral decision was given at the hearing on the "first question". The panel decided that an Ombudsman report supportive of a complaint is not sufficient, in and of itself, for the Tribunal to bypass its threshold question and conclude that it is advisable for it to reconsider any previous decision.

I am not convinced that the WCAT's response to the recommendation of the former Ombudsman has been adequate and appropriate. However, on receipt of the panel's written decision, I will review the matter to determine what further action on my part may be appropriate.

## OMBUDSMAN STAFF

## TO MARCH 1989

AINSLIE, Margaret
ALLAN, John
ARKELL, Tim
BAKER, Betty
BAUCHMAN, Laurel
BENSON, Heather
BERNIER, Suzanne
BIDELL, Joan
BISCHOPING, Johanna
BLENKINSOP, Rosemarie
BOOTHBY, Paula
BOURNS, Maureen
BROOKS, Paul
BROOKWELL, Larry
BROWN, Anne
BRYANT, Dale
BUCKSTEIN, Elaine
BURROWS, Patricia
BYLSMA, Klaas
CARL, Mary
CARLINO, Gerry
CASSON-ROBIN, Barbara
CEYSSENS, Paul
CHAMBERS, Sharon
CHEECHOO, Gilbert
CHIASSON, Lucille
CHIC, Jacquie
CONROY, Nadene
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CORION, Margaret
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CUMMINGS, Penny
DEAR, Rosie
DEARDEN, Sylvana
DEODAT, Zalina
DRAWBELL, Steven
DUONG, Chinn
EPRILE, Stephen
EVANS, Cathy
FARNCOMBE, Peter
FENTON, Mary Jane
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GERHARD, Perry
GIACOMINI, Sergio
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HARRISON, Joan
HASLAM, Sue
HILL, Daniel
HIRST, Barbara
HOBSON, Jim
HOFFMAN, Judith
HOLMES, Jackie
HUNG, Elsa
IAHTAIL, Mary-Lou
IAROCCI, Jacquelynne
IRONS, Alison
ISOVSKI, Azire
JANMOHAMED, Shirin
JONES, Christine
KATAMAY, Olga
KEIL, Martha
KERSHAW, Janet
KIESECKER, Barbara
KING, Dianne
KNUDSON, Inez
KRAY, Jansen
KUTA, Elizabeth
LAMPKIN, Lorna
LA ROSA, George
LANTHIER, Elise
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LEBLANC, Sharon
LEE, Allan
LEE, Barbara
LEE, Judith
LEGARDO, Lourdes
LOGAN, Rosemary
LUCAS, Lourine
LYNCH, Gwen
MARCHAND, Marie
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MARTIN, Christine
MAY, Laurel
MCCOLLIN, Phyllis
MCKAY, Catherine
MCLEOD, Maret
MENNIE, Florence
MESLIN, Eleanor
MILLS, Allan
MORRISH, Ginette
MORRISON, Gail
MORTON, Margret
MURRAY, Dolly
MURPHY, Mary
NASIR, Josie
NICHOLSON, Sherrie
ORTVED, Janet
PEASE, Irv
PELLETIER, Allan

PENFOLD, Kathy
PFAFF, Gail
PRESNER, Matilda
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ROBERT, D'Arcy
RODGERS, Faye
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SHANKOWSKY, Harry
SHECHTER, Sandra
SKENE, Tom
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THEN, Milan
THOMPSON, Kim
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## MEMBERS OF THE STANDING COMMITTEE ON THE OMBUDSMAN

| | |
|---|---|
| Ms. C. Nicholas<br>Chairman | Scarborough |
| Mr. M.L. Bossy<br>Vice-Chairman | Chatham Kent |
| Ms. M. Bryden | Beaches-Woodbine |
| Mr. D.A. Carrothers | Oakville South |
| Mr. D. Cousens | Markham |
| Mr. J.D. Henderson | Etobicoke-Humber |
| Ms. L. LeBourdais | Etobicoke West |
| Mr. T. Lupusella | Dovercourt |
| Mr. K. MacDonald | Prince Edward-Lennox |
| Mr. E. Philip | Etobicoke-Rexdale |
| Mr. J. Pollock | Hastings-Peterborough |

CLERK: Mr. Franco Carrozza

STAFF:
Mr. J. P. Bell, Counsel
Ms. Jennifer Wilson, Research Officer
Legislative Research Services

# APPENDIX A

| OMBUDSMAN REPORT NUMBER | DETAILED SUMMARY NUMBER | RECOMMENDATION DENIED | CONSIDERED IN STANDING COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---|---|---|---|---|---|
| | | **MINISTRY OF THE ATTORNEY GENERAL** | | | |
| | | **Criminal Injuries Compensation Board** | | | |
| Special Report Mr. B | | 1. That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him. | 16 Rec. 7 | That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him. | A Divisional Court order has been obtained and the matter will be reheard by the Criminal Injuries Compensation Board, once updated medical information is available. |
| | | 2. That the Board establish guidelines to assist members in applying section 17(1). | 16 Rec. 8 | That the Criminal Injuries Compensation Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act. | |
| | | 3. That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act. | 16 Rec. 9 | That the Compensation for Victims of Crime Act be amended by deleting the words "for payment of compensation" from section 25(1). | |
| | | | 16 Rec. 10 | That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act; that the Board further consent to an order of the court setting aside its order of December 1, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted; and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing. | |

| OMBUDSMAN REPORT NUMBER | DETAILED SUMMARY NUMBER | RECOMMENDATION DENIED | CONSIDERED IN STANDING COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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| | | **MINISTRY OF THE ATTORNEY GENERAL**<br>**Criminal Injuries Compensation Board**<br>(cont'd) | | | |
| Special Report Ms. D | | 1. That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained, as well as additional costs, including return bus fare to Alberta from the hearing in Toronto, as well as reasonable babysitting costs to allow the complainant to attend the hearing in Toronto. | 16<br>Rec. 11 | That the Criminal Injuries Compensation Board award appropriate compensation to Ms. D for loss of income and pain and suffering as a result of the injuries sustained by her, as well as additional costs including return fare to a hearing in Toronto (if necessary) and reasonable babysitting expenses. | A Divisional Court order has been obtained and the matter will be reheard by the Criminal Injuries Compensation Board, once updated medical information is available. |
| | | 2. That the Board establish guidelines to assist members in applying section 17(1). | 16<br>Rec. 12 | That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act. | |
| | | 3. That the Board establish guidelines to assist members in dealing with applications by battered spouses to enable Board members to become sensitized to the issues involved. | 16<br>Rec. 13 | That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act; that the Board further consent to an order of the court setting aside its order of November 24, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted; and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing. | |
| | | 4. That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act. | | | |

| OMBUDSMAN REPORT NUMBER | DETAILED SUMMARY NUMBER | RECOMMENDATION DENIED | CONSIDERED IN STANDING COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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| | | **MINISTRY OF EDUCATION** | | | |
| Special Report Mrs. H | | 1. That the Attorney General, in conjunction with the Minister of Education, take appropriate steps to amend the Teachers' Superannuation Act, R.S.O. 1980, c.494 and the Teachers' Superannuation Act, 1983, c.84 to be in compliance with section 15(1) of the Charter of Rights and Freedoms, effective April 17, 1985; and | 17 Rec. 4 | That the Ministry of Education cause the Teachers' Superannuation Commission to pay Mrs. H survivor benefits as of August 8, 1985, and that the Ministry of Education, within three months of this motion, on or about November 22, 1988, report to this Committee on the advisability of extending this benefit as a matter of right to spouses of Teachers' Superannuation Fund members adversely affected. | The Ministry has advised that relevant amendments to the Teachers' Superannuation Act will be recommended to Cabinet in the near future. No payments have been made. |
| | | 2. That following these amendments, the Teachers' Superannuation Commission take the necessary steps to issue a dependent's allowance to Mrs. H in accordance with section 36(1) of the Teachers' Superannuation Act, R.S.O. 1980, c.494, effective from the first day of her inquiry for same. | 17 Rec. 5 | That the Committee direct the working group (as set up by the Minister of Education) to deal with the issue of Mrs. H's pension and the general issue of pensions, as soon as possible. | |
| | | and, in the alternative: | 17 Rec. 6 | That the Minister of Education, in conjunction with any other governmental organization he deems necessary, issue an ex gratia payment to Mrs. H as soon as possible, effective from the first day of the month following the date of her inquiry for same, until the amended provision is in force. Such a payment can be made through the annual budgetary process, | |
| | | 1. That the Attorney General, in conjunction with the Minister of Education, take appropriate steps to amend the Teachers' Superannuation Act, R.S.O. 1980, c.494 | | | |

| OMBUDSMAN REPORT NUMBER | DETAILED SUMMARY NUMBER | RECOMMENDATION DENIED | CONSIDERED IN STANDING COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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**MINISTRY OF EDUCATION**
(cont'd)

and the Teachers' Superannuation Act, 1983, c.84 to remove the provision which he has found to be improperly discriminatory; and

2. That the Minister of Education, in conjunction with any other governmental organization he deems necessary, issue an ex gratia payment to Mrs. H as soon as possible, effective from the first day of the month following the date of her inquiry for same, until the amended provision is in force. Such payment can be made by providing for it thorough the annual budgetary process, so that no question will arise as to the authority of the Ministry to make the payments. Also, he recommended that payments be made to any other surviving spouses who have been denied a full dependent's or survivor allowance by the Teachers' Superannuation Commission pursuant to the Teachers' Superannuation Act or the Teachers' Superannuation Act, 1983 payable from the first day of the month following the date of their request for a benefit as a result of his recommendation.

so that no question will arise as to the authority of the Ministry to make the payments; and

That the Minister of Education, in conjunction with any other governmental organization he deems necessary, make spousal payments to any other surviving spouses who have been denied a full dependent or survivor allowance by the Teachers' Superannuation Act or the Teachers' Superannuation Act, 1983, payable from the first day of the month following the date of their request for a benefit as a result of this recommendation.

| OMBUDSMAN REPORT NUMBER | DETAILED SUMMARY NUMBER | RECOMMENDATION DENIED | CONSIDERED IN STANDING COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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| | | **MINISTRY OF THE ENVIRONMENT** | | | |
| 11 | 10 | That the Minister cancel his decision to accept the adjudicator's recommendation not to pay the complainant's claim for interest; that the Minister accept and consider the claim as one properly made under the Public Works Creditors Payment Act. | 12 Rec. 2 | That the Minister of the Environment accept in principle that the Crown may, in the appropriate circumstances, pay a claimant interest due pursuant to a term of a contract with a contractor; that the Minister consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay the claim. | In May, 1988, the Deputy Minister and the Acting Director of Legal Services for the Ministry appeared before the Committee and undertook to initiate the arbitration process within a week. The process is now underway. |
| | | | 13 Rec. 2 | That an independent adjudicator be appointed to assess the matter of whether or not interest is owed to the complainant. | |
| | | | 15 Rec. 1 | That the adjudication be styled as a hearing in the ordinary course, with an opportunity given to the parties to call and lead any evidence they consider appropriate;<br><br>That the principal amount upon which interest is to be calculated be clearly stated as a sum not to exceed $27,730.00;<br><br>That the rate of interest applied by the adjudication be determined in | |

| OMBUDSMAN REPORT NUMBER | DETAILED SUMMARY NUMBER | RECOMMENDATION DENIED | CONSIDERED IN STANDING COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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| | | **MINISTRY OF THE ENVIRONMENT** (cont'd) | | | |
| | | | | accordance with the Courts of Justice Act; and<br><br>That the costs of adjudication be paid by the Ministry, except for the complainant's legal costs. | |
| | | **MINISTRY OF GOVERNMENT SERVICES** | | | |
| 11 | 3 | That the complainant be paid reasonable compensation for his loss by either the Ministry of Government Services or the Board. | 17<br>Rec. 1 | That the Clerk of the Committee notify the Minister of the Ministry of Management Board to place in the Estimates for 1988-89, the Ministry of Government Services, Public Services Superannuation Board, the sum of $2,239.91 plus interest at 6.5% calculated annually from November 30, 1967 to the date payment is made to Mr. O. | The Committee's recommendation has been implemented. Mr. O received $8,923.57 in March, 1989. |

| OMBUDSMAN REPORT NUMBER | DETAILED SUMMARY NUMBER | RECOMMENDATION DENIED | CONSIDERED IN STANDING COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---|---|---|---|---|---|
| | | **MINISTRY OF HEALTH** | | | |
| Special Report Mr. K, Mr. & Mrs. L, Ms. M | | That the Ministry amend Ontario Reg. 596/85 in order to remove all age restrictions pertaining to the provision of companion travel grants under the Northern Health Travel Grant Program. | 17 Rec. 2 | That the Ministry amend Ontario Reg. 596/85 in order to remove all age restrictions pertaining to the provision of companion travel grants under the Northern Health Travel Grant Program. | The Ministry has advised the Ombudsman that the whole program under which travel grants are provided for those requiring health care is under review. |
| | | **Ontario Health Insurance Program** | | | |
| Special Report Mrs. J | | That the Ministry of Health/OHIP reconsider including in the Schedule of Benefits the cost of donor sperm as part of the artificial insemination procedure currently covered under the Schedule of Benefits. | 17 Rec. 3 | That the Ministry of Health arrange to provide donor sperm to Mr. and Mrs. J at no cost as soon as an acceptable test has been developed to ensure that donor sperm is free from the AIDS virus. | The Ministry advises that it is developing a policy for the provision of semen to Ontarians at no cost, and that the policy will be implemented in 1989. |

| OMBUDSMAN REPORT NUMBER | DETAILED SUMMARY NUMBER | RECOMMENDATION DENIED | CONSIDERED IN STANDING COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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| | | **MINISTRY OF HOUSING** | | | |
| | | **Ontario Housing Corporation** | | | |
| 7 | 18 | 1. That OHC reconsider C Limited's claim as assessed by the referee and rule on the correctness of the assessment;<br><br>2. That OHC reconsider the mortgage in question as being a collateral security and not taken by C Limited in lieu of cash and not altering the then existing obligations between C Limited and W Limited;<br><br>3. That OHC not deny C Limited's claim on the basis that it was not a claimant or a contractor as defined by the Public Works Creditors Payment Act and accept the referee's definition thereof; and<br><br>4. That OHC recommend that the claim as assessed by OHC be paid by the surety. | 8 | OHC advised the Committee in its hearings on the Ombudsman's Seventh Report that the recommendation would be implemented. The Ombudsman and the Committee agreed that the response of the governmental organization was adequate. | In January, 1988, it was learned that the recommendation had never been implemented, and this matter was brought to the present Standing Committee's attention. C Limited received a cheque for $18,196.57 in August 1989. |

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| | | **MINISTRY OF NATURAL RESOURCES** | | | |
| Special Report Chief B | | 1. That the Ministry of Natural Resources employ a consultative procedure in future when dealing with perceived contraventions of section 8 of Regulation 414 under the Game and Fish Act by directly informing relevant parties, including each licensee, of delinquent reports and confirming all contact in writing; and<br><br>2. That the Ministry of Natural Resources reimburse the fishermen of the fishery who were charged and convicted for the costs of their legal expenses, and those fishermen who were convicted should also be reimbursed the amount of their fines, once they have been paid. | 16 Rec. 14 | 1. That the Ministry of Natural Resources employ a consultative procedure in future when dealing with contraventions of section 8 of Reg. 414 under the Game and Fish Act by directly informing the individual Band licensees in question and confirming all contact in writing; and<br><br>2. The Committee expressed grave concern at the Ministry of Natural Resources' not responding to the Ombudsman's section 19(3) report with all the facts that were available to the Ministry at that time. | The Ministry has advised that it has changed its practice and now sends out notices directly to individual licensees. |

# APPENDIX B

| OMBUDSMAN REPORT NUMBER | DETAILED SUMMARY NUMBER | RECOMMENDATION UNDER SECTION 22(3)(d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN STANDING COMMITTEE REPORT NO. | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---|---|---|---|---|---|---|---|
| | | MINISTRY OF GOVERNMENT SERVICES | | | | | |
| 2 | 60 | That the Ministry pay the complainant the sum of $1,318.00 for his losses and legal expenses. | | The Ministry of Government Services stated that it had no authority to comply with the recommendation. | 3, Rec. 34 | That the Audit Act and the Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of the Ombudsman Act have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further, that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Standing Committee.<br><br>That the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom | The Ministry of Treasury and Economics has responded and proposed that the Ombudsman Act is the more appropriate statute for the amendment, since the purpose of the amendment directly relates to procedure under that Act. The Ministry proposed that the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that the governmental organization pay a specified sum to or for the benefit of the complainant to reimburse the complainant for an ascertainable financial loss suffered by him in the matter complained of, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from |

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| | | MINISTRY OF GOVERNMENT SERVICES (cont'd) | | | | | |
| | | | | | | the report is made that the governmental organization pay a specified sum to or for the benefit of the complainant to compensate the complainant for an ascertainable financial loss suffered by him, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this section, for the payment of the sum so agreed on, such sum shall, where it is less than $1,000 and has been ascertained as required by this section, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is $1,000 or more, it shall be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such | this section, for the payment of the sum so agreed on, such sum may, where it is less than $1,000, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is $1,000 or more, it may be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned."<br><br>The amendment has been included in the package of amendments to the Ombudsman Act. |

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| | | MINISTRY OF GOVERNMENT SERVICES (cont'd) | | | | | |
| | | | | | | payment as is recommended by the Minister concerned." | |
| | | | | | 12, p. 16 | The Committee noted that the Attorney General has stated that recommendations for these amendments to the Act would be placed before Cabinet. The Committee expects to be dealing with them in the near future. | |
| | | | | | 13, p. 8 | The Committee recommended that the Attorney General table immediately in the Legislature a bill amending the Ombudsman Act. | |
| | | | | | 15, p. 17 | The Committee recommended "that the amendments to the the Ombudsman Act be tabled in the legislature without delay; and that all parties cooperate in speeding the progress of the amending bill through the house." | |
| | | | | | 16, p. 8 | The Committee recommends that the Attorney General give priority to introducing and approving amendments to the Ombudsman Act in the current or next session of the Legislature. | To date, no Bill has been tabled. |

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| | | MINISTRY OF HEALTH | | | | | |
| 3 | 40 | That: 3) The Nursing Homes Act, 1972, be amended in order that provision be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. This licence should be conditional on compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional licence. | May 4, 1977 | Agreed to implement recommendation. | 5, p. 32 | The Committee considered this complaint for the purpose of following up with the Ministry as to the implementation of the Ombudsman's recommendation as set out at pages 177 and 178 of the Ombudsman's Third Report. | |
| | | | | | 11, p. 21 | The Committee accepted the interim arrangement on the understanding that the Act will be amended at some time in the future. | |
| | | | | | 12, p.15 | The Committee noted that it is still awaiting amendments to the legislation and will continue to monitor the Ministry's response to its recommendation. | |
| | | | | | 13, p. 12 | The Committee noted that the interim arrangement accepted by the Committee pending amendment of the Nursing Home Act continues to be followed by the Ministry and will be followed until the legislation is amended. The Committee expressed hope that the amendments will be brought forward soon. | The Ministry has advised that the necessary amendment has been enacted as S.O. 1987 c.20, s.4. |